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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 324

WARREN COUNTY, MISSISSIPPI,
Petitioner,

versus

C. E. HESTER, ET AL,
(STATE OF LOUISIANA, Intervenor),
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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HAUSER PRINTING CO., INC., NEW ORLEANS

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IN THE

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No. _____

WARREN COUNTY, MISSISSIPPI,
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versus

C. E. HESTER, ET AL,
(STATE OF LOUISIANA, Intervenor),
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

Petitioner, Warren County, a political subdivision of the State of Mississippi, prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Louisiana entered in the above entitled case on April 25, 1955.

CITATIONS TO OPINIONS BELOW

The opinion of the Judge of the District Court (R. 191-226) is unreported and is printed in Appendix B hereto, *infra* page 17. The opinion of the Supreme Court of the State of Louisiana, as yet unreported, is printed in Appendix C hereto, *infra* page 59 hereof.

JURISDICTION

The judgment of the Supreme Court of Louisiana was entered on April 25, 1955 (R. 930). A timely petition for rehearing filed on May 7, 1955 (R. 941), was denied on May 23, 1955 (R. 962). The jurisdiction of this Court is invoked under 28 U.S.C., Section 1257(3) because (a) due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States has been denied to a political subdivision (Petitioner) acquiring an interstate toll bridge under the terms of an Act of the Congress of the United States, (b) calculated discrimination in taxing such toll bridge has been condoned and sanctioned by the highest Court of the State which imposed the tax, all in denial of the equal protection of the laws assured by said Fourteenth Amendment, and (c) the singling out of Petitioner's property and the unrestrained increases in the assessments thereof amount not only to a taking of such property without due process of law but also, with reference to this interstate bridge, to an unjust burden on commerce in violation of Article I, Section VIII, Subdivision 3 of the Constitution of the United States.

QUESTIONS PRESENTED

1. Can one State (Louisiana) in which part of an interstate bridge is located disregard the Fourteenth Amendment in taxing that bridge simply because the property is owned by a public body, a political subdivision (Warren County, Mississippi) of the adjoining State which acquired the said bridge and is operating same under the authority and terms of an Act of Congress?

2. Can a State constitutionally single out and discriminate against a taxpayer by employing, in advance

of tax raises, special and private counsel who is assigned a percentage of the increases to be realized in tax revenues **over future years** from the properties owned by the victim of such discrimination?

3. Can an interstate toll bridge, because it is the only one of its kind in the State subject to taxation, be taxed on a higher and different basis than all other property in the taxing district, especially when such untrammelled tax increases will likely prevent the interstate bridge from ever becoming toll free to the general traveling public?

STATUTES INVOLVED

The statutory provisions involved are the Act of Congress of May 3, 1926 (Public Law 170—69th Congress), 44 Statutes 388, and the General Bridge Act, 33 U.S.C.A., Section 491 *et seq.* The first mentioned Act as well as excerpts from the General Bridge Act are printed in Appendix A, *infra* pp. 11 to 16.

STATEMENT

The property herein involved is an interstate toll bridge crossing the Mississippi River at Vicksburg, Mississippi, being a link in transcontinental U. S. Highway 80. Ths bridge was open to traffic in 1930, having been constructed under the authority of an Act of Congress approved May 3, 1926, Appendix A. During private ownership, when operated for profit, the portion of this bridge within Louisiana was never assessed for more than $1,200,000. Petitioner, Warren County, Mississippi, a public body, acquired this bridge on April 30, 1947, from the private Delaware corporation then owning it. Following Petitioner's acquisition the assessed valuation

within Louisiana of this property was almost trebled, being raised to $3,150,000, though at the same time there were no increases made of the assessments of any other properties within the taxing district. As shown by Warren County Exhibit 2, on July 7, 1948, before increasing the assessment, the taxing authorities (Respondents) within Madison Parish, Louisiana, engaged the services of private counsel and, in addition to other compensation, agreed to pay attorney's fees **over a period of ten years following** predicated on a percentage of the increases of revenue over former years which were realized and upheld from the properties of this taxpayer, Section 6 of said Exhibit 2 being particularly applicable.[1] The record in this case shows that those in control within said Madison Parish do not want a free bridge. The Tax Assessor so testified (R. 442), and the Secretary of the governing authority, the Police Jury, so appraised the controlling sentiment.[2] The private counsel whom Respondents employed, in writing to a member of the Tax Commission on July 13, 1950 (Warren County Exhibit 4, Jacobs "3")

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[1] Section 6 of the contract of the taxing authorities employing special counsel reads as follows:

"6. In addition to the initial or retainer fee and expenses hereinabove provided for, the First Parties agree to pay to the Second Parties, who agree to accept same as full compensation, additional yearly payments for a period not to exceed but to include ten (10) consecutive tax-years, beginning with the year during the time of said litigation covered hereby or immediately thereafter when the taxing authorities of Madison Parish shall, in their discretion, determine to increase, howsoever, the amount of tax revenues to be exacted from the Vicksburg Bridge Company or the owners or operators of said Bridge; such additional yearly payments to be the equivalent of five per cent. (5%) of the amount by which the aggregate amount of any and all taxes levied against such taxpayer in the Parish of Madison during each of those ten (10) tax-years shall exceed the amount of tax revenues paid by that taxpayer to the Tax Collector of the Parish of Madison during the tax year 1947; such yearly payments to be altogether the same as to obligation, determination, allocation and payment as hereinabove provided as to the initial or retainer fee, except as to due date which shall be within ten (10) days after said taxes are received by the First Parties."

[2] "A. Well, a good many of the citizens didn't want a toll-free Bridge because they thought people from our little town would go to Vicksburg and trade instead of trading at home." (R. 347)

was explicit in submitting: "The people of Madison Parish do not want a free bridge for fear of losing too much trade to Vicksburg".

Following his employment in 1948 special counsel prepared a suggested form of statement for the Assessor containing various formulas under which an increase would be effected in Petitioner's tax assessment (Warren Cty. Ex. 4, Zatarain "G", "P"). These formulas were largely based upon assumed earnings and reproduction values. The record herein shows that neither earnings nor reproduction costs are accorded any controlling consideration by the assessing authorities in fixing the assessed value of other properties.[3] Private counsel nevertheless asked the Tax Commission to secure information regarding the value of other concerns **only** to seek to justify the raise made in the assessment of Petitioner's property, but with no idea that such information would be used in valuing the properties of any other taxpayer.[4]

In the year 1952 the Louisiana Tax Commission, being charged with the duty of finally fixing all the assessments within Louisiana, reviewed the assessment of this taxpayer. That Commission determined that any raise in the assessed value of more than 50% over that which had been fixed when the same property was privately owned and operated for profit would be unreasonable and unfair. Therefore the Louisiana Tax Commis-

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[3] The members of the Louisiana Tax Commission testified that these factors were not utilized in valuing other properties. (Warren Cty. Ex. 4, p. 34, 56, 57; Jacobs "A" attached to said exhibit, p. 26).

[4] "I think it might be advisable and suggest that these taxpayers (all public utilities in the Parish other than the Vicksburg Bridge) be not informed precisely what is wanted with this data, but that it be exacted as a part of the Commission's study generally but that they be assured, if you will, it is not desired in contemplation of any action as to their assessment in Madison Parish or elsewhere." (Emphasis supplied)—from Warren Cty. Ex. 4, Zatarain "E", letter of March 20, 1951, from counsel Hudson to Louisiana Tax Commission.

sion directly assessed the property at $1,800,000 and cancelled the $3,150,000 assessment submitted for the approval of the Commission by the local assessing authorities. The Respondents, being the local assessing authorities joined by certain private citizens, filed suit in the State Court attacking the action of the Louisiana Tax Commission. Upon the request of the Governor of the State of Louisiana the Attorney General, acting for the State, intervened in the suit against the Tax Commission thereof and this Petitioner.

Following a lengthy trial on the merits the trial judge reviewed the evidence and, as shown Appendix B, concluded:

> " * * * In my judgment the action of the assessor singling out this one taxpayer and in making the large increases in this one assessment without corresponding increases in other assessments was without doubt arbitrary and capricious. While the members of that Tax Commission did not say so, it is my belief that they recognized that the assessor had gone completely 'overboard' in these increases and an adjustment had to be made.
>
> "Art. 10, sec. 1, of our state constitution and the 14th amendment of the Federal constitution provide for uniformity in tax levies on properties in the same class. While the language of these constitutional provisions indicate that it is intended only to limit to the same ratio of valuation or to the same tax rate all properties of each class, the brief of counsel for defendant herein cites cases which have granted relief from the action of assessors in giving one property greater percentage of full value than other properties, regardless of the class. Those cases are: *Cummings v. Merchants National Bank*, 101 U.S. 153; *Taylor v. L. and N. Railway Company*, 88 Fed. 350; *Ray-*

mond v. Chicago Union Traction Company, 207 U.S. 20; *Sioux City Bridge v. Dakota County*, 260 U.S. 441; *Bohler v. Callaway*, 267 U.S. 479; *Greene v. Louisville and Interurban R. R. Company*, 244 U.S. 499."

—Appendix B, pages 55-56 hereof.

The trial Judge factually concluded that the $1,800,000 assessment as fixed by the Tax Commission was fair and not discriminatory, and upheld this figure over the claim of Petitioner that it should be reduced to $1,200,000 (the amount of the assessment when the bridge was privately owned) and the demand of Respondents that it be raised to $3,150,000.

On appeal by Respondents to the Supreme Court of Louisiana, that Court reinstated the assessment of $3,150,000 as submitted by the Assessor for the approval of the Louisiana Tax Commission, in its opinion ignoring all issues of discrimination which were shown by the record and treated with by the trial judge, all of which were argued and presented in brief before that Court.

As the matter now stands, the bridge property is assessed at $3,150,000. Such an assessment would entail an increase in the taxes paid by Warren County of approximately $50,000 over the taxes paid by the former owner and an increase of approximately $40,000 over the taxes required to be paid under the assessment fixed by the Louisiana Tax Commission.

REASONS FOR GRANTING THE WRIT

1. In the case of *Warren County v. Hester* (1951), 219 La. 763, 54 So. 2d 12, the Supreme Court of Louisiana held that this Petitioner was not, as a public body of Mississippi, entitled to tax exemption in Louisiana and concluded its opinion by holding that Petitioner was

not a "person" entitled to the protection of the Fourteenth Amendment of the Federal Constitution. This Honorable Court undoubtedly found that conclusion to be mere dicta and denied certiorari, 72 S. Ct. 167, 342 U.S. 877. The Supreme Court of Louisiana evidently does not believe this Petitioner to be entitled to "due process" or the equal protection of the law and that Court has at bar ignored all issues of discrimination against the property of this Petitioner and the rights and protection to which Petitioner as a "person" is entitled under the Fourteenth Amendment of the Federal Constitution. In not treating with the issues which afford Petitioner protection under the Fourteenth Amendment the State Court itself denied to Petitioner the rights and benefits assured by said Amendment. *Shelley v. Kraemer*, 334 U.S. 1, 68 S. Ct. 836, 92 L. Ed. 1161; *Chicago, Burlington & Quincy Ry. Co. v. Illinois ex rel Grimwood*, 200 U.S. 561, 26 S. Ct. 341, 50 L. Ed. 596.

2. The Act of Congress, Appendix A, as approved May 3, 1926, sought to encourage the acquisition by Petitioner, a political subdivision of Mississippi, of this very bridge, containing provisions with reference to freeing this bridge of tolls to the general traveling public. The General Bridge Act, 33 U.S.C.A., Section 497, expressly provides that a municipality shall thereunder be construed to be a "person". Petitioner has no sovereignty in Louisiana. It needs and is entitled to the protection of the Fourteenth Amendment to the Federal Constitution. In denying this protection the State Court is defeating the purposes of the Act of Congress and the rights to which Petitioner under the circumstances is constitutionally entitled under the Fourteenth Amendment.

3. The trier of the facts found that the tax raise made against Petitioner's property "was without doubt

arbitrary and capricious". The appellate court of Louisiana neither criticized nor disturbed this finding. The calculated and deliberate discrimination against Petitioner manifested itself in the employment of special and private counsel whose compensation was made to contingently depend upon the amount of tax raises effected and upheld against Petitioner's property alone over a period of ten years following the employment of such counsel. Such systematic and intentional singling out of the properties of any one taxpayer for discriminatory tax raises is constitutionally abhorrent. *Cummings v. Merchants National Bank*, 101 U.S. 153, 25 L. Ed. 903; *Raymond v. Chicago Union Traction Co.*, 207 U.S. 20, 28 S. Ct. 7, 52 L. Ed. 78, 12 Ann. Cas. 757; *Greene v. Louisville & I. R. Co.*, 244 U.S. 499, 37 S. Ct. 673, 61 L. Ed. 1280, Ann. Cas. 1917 E. 88; *Bohler v. Callaway*, 267 U.S. 479, 45 S. Ct. 431, 69 L. Ed. 745; *Sioux City Bridge Co. v. Dakota County, Neb.*, 260 U.S. 441, 43 S. Ct. 190, 67 L. Ed. 340, 28 A.L.R. 979; *Edward Hines v. Stewart, Sheriff*, 46 F. (2d) 910, 914, writ ref., 283 U.S. 861, 51 S. Ct. 654, 75 L. Ed. 1466. In the courts below at every stage Petitioner urged that it was against public policy and constitutionally objectionable for a sovereign having the power of taxation to employ private counsel and to contingently assign to him over future years a percentage of all tax increases which he could uphold. To uphold this action will permit political favoritism on the one hand and political punishment on the other and will destroy the liberties and protection of those whose properties are subject to taxation.

4. To give any justification for the raises made, Respondents here utilized assumed earnings and reproduction costs as determinative factors. The record shows that neither of these factors is accorded any controlling

importance in assessing other properties within Louisiana. The consequence has been that other assessments have either remained static or have been reduced since the depression days of the early 1930's. (Warren County Exs. A-J; Appendix B, pp. 145-148). It is an unequal and as unfair to consider such factors as assumed earnings and reproduction costs when valuing the properties of this single taxpayer as it is to apply a different ratio. See cases above cited and particularly *Sioux City Bridge Co. v. Dakota County, Neb., supra.*

5. Respondents admittedly do not want the bridge to be toll-free. If Respondents are permitted without restraint to impose unreasonable ad valorem taxes against these bridge properties the toll-free requirements of the Act of Congress will be defeated and an unjust burden will result on interstate commerce itself. That will be done indirectly which is not sanctioned directly. The only taxation permitted is "the ordinary taxation to which other property is subject". *Gloucester Ferry Co. v. Pennsylvania*, 114 U.S. 196, 5 S. Ct. 826, 29 L. Ed. 158; *Covington & Cincinnati Bridge Co. v. Commonwealth of Kentucky*, 154 U.S. 204, 14 S. Ct. 1087, 38 L. Ed. 962, *Article I, Section VIII, Subdivision 3, Constitution of the United States.*

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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L. W. BROOKS,
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LANDMAN TELLER,
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APPENDIX "A"

USCA
Title 33, Chapter 11—**Bridges Over Navigable Waters**

Sec. 492. **Bridge as post route; limitation as to charges against Government; telegraph and telephone lines.**

Any bridge built in accordance with the provisions of this chapter, sections 491 to 498, inclusive, shall be a lawful structure and shall be recognized and known as a post route, upon which no higher charge shall be made for the transmission over the same of the mails, the troops, and the munitions of war of the United States than the rate per mile paid for the transportation over any railroad, street railway, or public highway leading to said bridge; and the United States shall have the right to construct, maintain, and repair, without any charge therefor, telegraph and telephone lines across and upon said bridge and its approaches; and equal privileges in the use of said bridge and its approaches shall be granted to all telegraph and telephone lines across and upon said bridge and its approaches; and equal privileges in the use of said bridge and its approaches shall be granted to all telegraph and telephone companies. (Mar. 23, 1906, c. 1130, § 2, 34 Stat. 85.)

Sec. 493. **Use of railroad bridges by other railroad companies.**

All railroad companies desiring the use of any railroad bridge built in accordance with the provisions of this chapter, sections 491 to 498, inclusive, shall be entitled to equal rights and privileges relative to the passage of railway trains or cars over the same and over the approaches thereto upon payment of a reasonable compensation for such use; and in case of any disagreement be-

tween the parties in regard to the terms of such use or the sums to be paid all matters at issue shall be determined by the Secretary of War upon hearing the allegations and proofs submitted to him. (Mar. 23, 1906, c. 1130, § 3, 34 Stat. 85.)

Sec. 494. **Obstruction of navigation; alterations and removals; lights and signals; draws; tolls.**

* * * If tolls shall be charged for the transit over any bridge constructed under the provisions of this chapter, sections 491 to 498, inclusive, of engines, cars, street cars, wagons, carriages, vehicles, animals, foot passengers, or other passengers, such tolls shall be reasonable and just, and the Secretary of War may, at any time, and from time to time, prescribe the reasonable rates of toll for such transit over such bridge, and the rates so prescribed shall be the legal rates and shall be the rates demanded and received for such transit. (Mar. 23, 1906, c. 1130, § 4, 34 Stat. 85.)

* * * * *

Sec. 497. **"Persons" defined.**

The word "persons" as used in this chapter, sections 491 to 498, inclusive, shall be construed to import both the singular and the plural, as the case demands, and shall include municipalities, quasi municipal corporations, corporations, companies, and associations. (Mar. 23, 1906, c. 1130, § 7, 34 Stat. 86.)

ACT OF MAY 3, 1926

(Public—No. 170—69th Congress H. R. 9758, 44 Stat. 388.)

An Act Granting the consent of Congress to the Vicksburg Bridge and Terminal Company to construct, maintain and operate a bridge across

the Mississippi River at or near the City of Vicksburg, Mississippi.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of Congress is hereby granted to the Vicksburg Bridge and Terminal Company, its successors and assigns, to construct, maintain and operate bridge and approaches thereto across the Mississippi River, at a point suitable to the interests of navigation, between a point in the city of Vicksburg, Mississippi, at or near the crossing of the Dixie Overland Highway, and a point opposite in the State of Louisiana, at or near the continuation of the Dixie Overland Highway, in accordance with the provisions of the Act entitled "An Act to regulate the construction of bridges over navigable waters," approved March 23, 1906, and subject to the conditions and limitations contained in this Act.

Sec. 2. There is hereby conferred upon the said Vicksburg Bridge and Terminal Company, its successors and assigns, all such rights and powers to enter upon lands and to acquire, condemn, appropriate, occupy, possess, and use real estate and other property needed for the location, construction, operation, and maintenance of such bridge and its approaches and terminals as are possessed by bridge corporations for bridge purposes in the State or States in which such real estate and other property are located upon making just compensation therefor, to be ascertained and paid according to the laws of such State or States; and the proceedings therefor shall be the same as in the condemnation and expropriation of property in such State or States.

Sec. 3. The said Vicksburg Bridge and Terminal Company, its successors and assigns, are hereby authorized to fix and charge tolls for transit over such bridge, and the rates so fixed shall be the legal rates until changed by the Secretary

of War under the authority contained in such Act of March 23, 1906.

Sec. 4. After the date of completion of such bridge, as determined by the Secretary of War, either the State of Mississippi, the State of Louisiana, any political subdivision of either of such States within or adjoining which any part of such bridge is located, or any two or more of them jointly, may at any time acquire and take over all right, title, and interest in such bridge and approaches, and interests in real property necessary therefor, by purchase, or by condemnation in accordance with the law of either of such States governing the acquisition of private property for public purposes by condemnation. If at any time after the expiration of twenty years after the completion of such bridge it is acquired by condemnation, the amount of damages or compensation to be allowed shall not include good will, going value, or prospective revenues or profits, but shall be limited to the sum of (1) the actual cost of constructing such bridge and approaches, less a reasonable deduction for actual depreciation in respect of such bridge and approaches, (2) the actual cost of acquiring such interests in real property, (3) actual financing and promotion costs (not to exceed 10 per centum of the sum of the cost of construction of such bridge and approaches and the acquisition of such interests in real property), and (4) actual expenditures for necessary improvements.

Sec. 5. If such bridge shall be taken over and acquired by the States or political subdivisions thereof under the provisions of section 4 of this Act, the same may thereafter be operated as a toll bridge; in fixing the rates of toll to be charged for the use of such bridge, the same shall be so adjusted as to provide as far as possible a sufficient fund to pay for the cost of maintaining, repairing, and operating the bridge and its ap-

proaches, to pay an adequate return on the cost thereof, and to provide a sinking fund sufficient to amortize the amount paid therefor within a period of not to exceed thirty years from the date of acquiring the same. After a sinking fund sufficient to pay the cost of acquiring such bridge and its approaches shall have been provided, the bridge shall thereafter be maintained and operated free of tolls or the rates of toll shall be so adjusted as to provide a fund not to exceed the amount necessary for the proper care, repair, maintenance, and operation of the bridge and its approaches. An accurate record of the amount paid for acquiring the bridge and its approaches, the expenditures for operating, repairing and maintaining the same, and of the daily tolls collected shall be kept, and shall be available for the information of all persons interested.

Sec. 6. The said Vicksburg Bridge and Terminal Company, its successors and assigns, shall, within ninety days after the completion of such bridge, file with the Secretary of War a sworn itemized statement showing the actual original cost of constructing such bridge and its approaches, including the actual cost of acquiring interests in real property and actual financing and promotion costs. Within three years after the completion of such bridge the Secretary of War may investigate the actual cost of such bridge, and for such purposes the said Vicksburg Bridge and Terminal Company, its successors and assigns, shall make available to the Secretary of War all of the records in connection with the financing and construction thereof. The findings of the Secretary of War as to such actual original cost shall be conclusive, subject only to review in a court of equity for fraud or gross mistake.

Sec. 7. The right to sell, assign, transfer, and mortgage all the rights, powers, and privileges conferred by this Act is hereby granted to the

said Vicksburg Bridge and Terminal Company, its successors or assigns, and any corporation to which such rights, powers, and privileges may be sold, assigned, or transferred, or which shall acquire the same by mortgage foreclosure or otherwise, is hereby authorized and empowered to exercise the same as fully as though conferred herein directly upon such corporation.

Sec. 8. The right to alter, amend, or repeal this Act is hereby expressly reserved.

Approved, May 3, 1926.

APPENDIX "B"

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53–55 Assessments generally in Madison Parish.

56 "In my judgment the action of the assessor in singling out this one taxpayer and in making the large increases in this one assessment without corresponding increases in other assessments was without doubt arbitrary and capricious." The The assessor had gone completely "overboard". Art. X, Sec. 1, Const. of State of Louisiana—14th Amendment.

57 "There is no evidence in this record which even tends to support the allegations that the action of the Tax Commission was arbitrary, unlawful and unreasonable . . . ."

APPENDIX "B"

19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
DIVISION C

NUMBER 43,590

C. E. HESTER, ET AL
versus
LA. TAX COMMISSION, ET AL

REASONS FOR JUDGMENT

In 1926 the Congress enacted Public Law Number 170 of the Sixty-Ninth Congress granting consent to the Vicksburg Bridge and Terminal Company, a Delaware Corporation, its successors and assigns, to construct, maintain and operate a combined highway and railroad toll bridge across the Mississippi River between Vicksburg in Warren County, Mississippi, and Delta Point in Madison Parish, Louisiana. The bridge was completed and opened in April, 1930, and has been in constant use to the present time. The Bridge Company issued and sold revenue bonds in sufficient amount to pay the original cost of construction and financing which the Secretary of War concluded under the provisions of the Act to be $6,199,516.43. (Jacobs-2 of Warren County Exhibit Four). The portion of the bridge in Louisiana was exempt from the payment of ad valorem taxes for a period through 1935. (Const. Art. X, Sec. 4, par. 7). Beginning with 1936 the assessor of Madison Parish assessed the portion of the bridge in Louisiana on the miscellaneous property assessment rolls for valuation fixed by the assessor and approved by the Board of Review and

the Louisiana Tax Commission through 1951. On April 30, 1947, Warren County, a political subdivision of the State of Mississippi, acquired fee title to the bridge by purchase. After its acquisition of ownership by Warren County the assessor continued to assess the Louisiana portion of the bridge in the name of Warren County which paid the taxes under protest and then sought each year by litigation in the Federal and State Courts to recover the amount paid on the alleged ground that the ownership of the property was in a public body and owed no tax. One suit was filed by the taxpayer in the State Court in Madison Parish, Louisiana, against C. E. Hester, Tax Collector, claiming that the bridge was public property devoted to public usage and therefore exempt from taxation under the specific provisions of Article 10, Section 4, paragraph one of the Constitution of Louisiana. The Court in that case denied the exemption and held that the imposition of the taxes in Louisiana was not unconstitutional. Warren County v. Hester, 54 So. (2) 12 (certiorari denied by U.S. Supreme Court, 342 U.S. 877).

In 1936 the first assessment of the portion of the bridge in Louisiana was made by the assessor on the assessment valuation of $900,000.00. The valuation was increased from time to time to 1948 and in 1949 the assessment valuation was $1,500,000.00. For each year of 1950, 1951 and 1952 the bridge property was assessed in Madison Parish, Louisiana, by the parish assessor, at the assessment valuation of $3,150,000.00, classified as miscellaneous property. The Louisiana Tax Commission approved and certified the rolls including this assessment in 1950 and 1951 and the taxes were paid under protest as mentioned above. After a joint hearing before the Tax Commission in June, the 1952 rolls for Madison Parish were likewise approved and certified by the Lou-

isiana Tax Commission with reservation of the right to further consider the assessment of this bridge property in Louisiana. On October 17, 1952, the Louisiana Tax Commission issued and sent to C. E. Hester, Tax Collector, and to the other proper officials of Madison Parish, its order directing that the bridge assessment in its entirety be cancelled from the general or miscellaneous property rolls and in lieu thereof the Louisiana Tax Commission made an initial direct assessment of the bridge property in Madison Parish on the public service roll at an assessment valuation of $1,800,000.00. The taxpayer paid the tax under protest, whereupon the Sheriff and ex-officio Tax Collector and the assessor of Madison Parish, Louisiana, the Madison Parish Police Jury and the School Board, the Fifth District Levee Board and six (6) individual taxpayers of Madison Parish brought this suit against the Louisiana Tax Commission and Warren County, Mississippi, praying for a declaratory judgment decreeing that (a) the special assessment for 1952 of $1,800,000.00 of the bridge property in Madison Parish directed by the Louisiana Tax Commission is arbitrary, erroneous, illegal, null and void, and that (b) the only correct and lawful assessment valuation for 1952 of the bridge property in Madison Parish is that of $3,150,000.00 according to the tax rolls as lawfully made, approved and originally filed. The Attorney General of Louisiana intervened on the side of the plaintiffs.

The following articles of plaintiffs' petition are quoted:

> "I. The individual plaintiffs above named, whether appearing herein in an official or in a representative capacity, all pay ad valorem taxes in Madison Parish, to and for the use and benefit of the State of Louisiana, Madison Parish, the

Fifth Louisiana Levee District and the School Board of Madison Parish, and are prejudiced by the hereinafter alleged unlawful, arbitrary and erroneous action of the Louisiana Tax Commission."

"XVII. Petitioners are informed, believe and allege that in so gratuitously, arbitrarily and erroneously reducing said assessment from $3,150,000.00 to $1,800,000.00, said Louisiana Tax Commission, as voluntarily disclosed by it in its said instructions to said Tax Collector and Assessor, gave no consideration whatsoever, to reproduction cost of said property, depreciation if any, nor to the revenues derived from the use of said property, which revenues petitioners are informed, believe and allege are annually in excess of $1,000,000.00 net.

"XVIII. That in so agreeing to and directing said assessment of $1,800,000.00, said Louisiana Tax Commission determined said assessment valuation by averaging only the original construction cost of said bridge in 1930, an estimate of such cost made in 1936 and the price paid for same by Warren County, Mississippi, in a bond transaction in 1947 and then assuming that seventy per cent (70) of said structure was situated in Madison Parish, Louisiana, and taking forty per cent (40) of that balance as the 'cost in Louisiana' for which it approximated the 1952 assessment it determined and directed; which said basis or method of calculation and valuation, voluntarily disclosed by it as aforesaid, is without any warrant in law and is erroneous, unreasonable, unscientific, inaccurate and unreal.

"XIX. That said property was lawfully assessed initially by the Assessor of Madison Parish and said assessment lawfully approved by the Parish Board of Reviewers and by the Louisiana Tax Commission, as aforesaid.

"XX. That said property and said taxpayer are neither of a kind or class assessable initially by the Louisiana Tax Commission and such action by said Commission is unlawful, null and void.

"XXIV. That said reduction of the tax revenues of Madison Parish of approximately ten per cent (10%) imposes a severe, unwarranted and unjustified additional burden upon every other taxpayer in Madison Parish, including these individual plaintiffs herein."

The Louisiana Tax Commission by separate answer admitted that it cancelled the 1952 assessment in the amount of $3,150,000.00 made by the assessor and that the bridge property was added by the Commission to its 1952 public service roll and directly assessed by the Commission at an assessment valuation of $1,800,000.00. Defendant Tax Commission generally denied practically all other allegations of plaintiff's petition and then alleged:

"27. Further answering plaintiffs' petition, your respondent, the Louisiana Tax Commission, alleges that all property located within the state is subject to assessment by it, the assessors of the various parishes of the state assuming the responsibility, under the supervision of your respondent, for listing and assessing all property within their respective parishes, except such property as is subject to direct assessment by your respondent; that a mandate exists by law which compels the Commission to assess directly and certify to the various parishes, all property (specifically defined by law), of all persons resident or non-resident whether locally domiciled or not, doing business and engaged in public service for hire, charge or compensation.

"28. Further answering plaintiffs' petition your respondent alleges that under the supervisory

jurisdiction given by law it may change or correct any and all assessments of property for the purpose of taxation, in order to make the assessments conform to the true and correct valuation; such changes or corrections may be made by it at any time before the taxes levied have actually been paid.

"29. Further answering plaintiffs' petition your respondent alleges that the property of the Vicksburg Bridge Commission commonly known as the 'Vicksburg Bridge' and all property used in connection therewith, falls in the category of property which shall be assessed directly by the Louisiana Tax Commission and its order of October 20, 1952, directed to the Tax Collector and Assessor of Madison Parish cancelling the 1952 assessment of said bridge placed thereon by the said assessor, was done with legal authority and the inclusion of said property on the Louisiana Tax Commission's 1952 'public service roll' is valid and binding on all parties concerned."

Defendant Warren County first filed exceptions of no right and no cause of action. After hearing the Court overruled the exception of no right of action and referred the exception of no cause of action to the merits. Defendant Warren County in its answer alleges that the bridge property is tax exempt and in the alternative that the property in Madison Parish should not be assessed at more than One Million Dollars. This defendant further alleges that it is a political subdivision of the State of Mississippi; that the said bridge has been operated since its purchase on April 30, 1947, under the direction of a voluntary civic group known as the Vicksburg Bridge Commission of Warren County, Mississippi; that the net revenues from tolls have been utilized in calling the bonds issued to obtain the money to pay the purchase price of the bridge; that the Sheriff of Madison Parish is under

a duty to collect the taxes as directed by the Louisiana Tax Commission as provided in its official order valuing the bridge property at $1,800,000.00; that the assessment valuation for 1950 and 1951 made by the assessor at $8,150,000.00 was over the said defendants' protest and that payment of the taxes under said assessment was made under protest for said years followed by suits to recover the same, which suits are now pending in the United States District Court for the Western District of Louisiana; that if said property is assessable at all it can only be directly assessed by the Louisiana Tax Commission as a public utility engaged in public service for hire, charge or compensation; that any attempted assessment of said property by the assessor is null and void; that an assessment in excess of $1,000,000.00 is excessive and would require this defendant to pay more than its just portion of the tax burden compared to that borne and paid by other property owners and that such assessment would constitute a taking of its property in violation of the Constitution of the State of Louisiana. This defendant prays that there be judgment decreeing that only the Louisiana Tax Commission has the right, duty and authority to assess the property of the defendant and should the Court determine that it is within its province to fix the amount of its assessment then the true and correct assessment valuation of this property is not in excess of One Million Dollars, and in the alternative, that said assessment valuation should not exceed that amount.

On these issues the case went to trial on June 9, 1953, and continued over a period of eight trial days. The record of the trial consists of 690 pages of oral testimony plus a large number of exhibits. The testimony has been transcribed and the case was submitted to the Court and

the last brief filed with this Court on July 28, 1954, when the Court took the case under advisement.

Amongst others, the following provisions of the Constitution and laws of this State are to be considered:

Const., Article X, Sec. 1: "The power of taxation shall be vested in the Legislature; shall never be surrendered, suspended or contracted away; and all taxes shall be uniform upon the same class of subjects throughout the territorial limits of the authority levying the tax, and shall be levied and collected for public purposes only. No property shall be assessed for more than its actual cash value, ascertained as directed by law, and all taxpayers shall have the right of testing the correctness of their assessment before the courts at the domicile of the assessing authority or as may be directed by law. The valuation and classification fixed for State purposes shall be the valuation and classification for local purposes; but the taxing authorities of the local subdivision may adopt a different percentage of such valuation for purposes of local taxation."

LSA 47:1702: "As used in this Sub-title the following terms have the meaning ascribed to them in this section, unless the context clearly indicates otherwise; * * *.

"(7) 'Actual cash value' or 'actual cash valuation' mean that valuation at which any real or personal property is assessed for the purpose of taxation, after the assessing authorities have considered every element of value in arriving at such valuation. The price at which any piece of real estate or personal or movable property shall have been sold for cash in the ordinary course of business, free of all encumberances, otherwise than at forced sale, shall be evidentiary only, and be considered with other factors in determining the actual cash value for assessment purposes."

LRS 47:1951: "All property situated within the state, except such as is expressly exempted from taxation by law, shall be subject to taxation on the basis of the assessed valuation thereof.

"Property not otherwise exempt from taxation, of all nonresident persons, firms, corporations, partnerships, associations, or companies is hereby declared subject to assessment and taxation, in the same manner as all other property in the state."

LRS 47:1957: "All taxable property in the state shall be assessed by the tax commission. The assessors shall be responsible, under the supervision of the tax commission, for listing and assessing all property within their respective parishes, except such property as is subject to direct assessment by the tax commission.

"All property subject to taxation shall be listed and assessed at actual cash value and the actual cash value of all property fixed by the tax commission shall be the actual cash value for all purposes.

"The assessor, in person or by deputy, shall have the right and power to require of any property holder an inspection of his books and accounts, and shall have the right to examine them in full, and may, from such books and accounts, make an estimate of the value of the property to be assessed. In order to have accessible information regarding the business of nonresidents, all books and papers pertaining to the business transacted in Louisiana shall be kept within the state. The assessor shall also, if necessary, put upon oath the owner, agent, or employees of the owner, and propound to him or them such questions as will elicit from him or them the actual cash value of the property. The assessor may inquire into the insured value of all property or into the value at which it had been insured previously, and con-

sider the insured value in listing the property for taxation. The tax assessor shall value each item of property as he considers just, whenever he does not agree with the valuation as fixed by the taxpayer."

LRS 47:1958: "The assessor, in assessing lands and lots, shall take into consideration the enhanced value of such lands and lots arising from the buildings and improvements thereon; * * *.

"The assessor shall also inquire into the purchase price paid for real property when acquired by the owner, and ascertain and acquaint himself with any sales or transfers of property of like description or value made or effected in the vicinity, within the year or years next preceding the listing for assessments then being made; and the price paid for property at such sales or transfers shall be considered by the assessors in determining the value of the real property to be listed for assessment."

LRS 47:1979: "The actual cash valuation and assessment of gas and oil pipe lines, electrical transmission lines, water and gas distribution system, railway, telegraph, telephone, sleeping car, and express businesses throughout the state shall be fixed and assessed by the tax commission for all purposes.

"The tax commission may require individuals, partners, companies, associations, and corporations engaged in railway, telegraph, telephone, sleeping car and express businesses, or in any transportation business to furnish information concerning their capital, funded or other debt, current assets and liabilities, value of property, earnings, operating and other expenses, taxes and all other facts which may be needed to enable the tax commission to ascertain the value and the relative burdens borne by all kinds of property in the state according to such forms as may be prescribed by the tax

commission, and at such time as it may fix. The tax commission may require individuals, companies, partnerships and corporations to make reports to the tax commission, giving trial balances, a full and complete description of all taxable property owned, its cost, its age, the value at which it is carried on the books, and such other information as the tax commission may require in the form, and at the time prescribed by it. Copies of such reports may be furnished parish assessors whenever the tax commission may deem it useful and necessary. All such reports shall be considered confidential and shall be used by the tax commission and the assessors only for the purpose of securing a correct assessment and shall not be subject to inspection by the public."

LRS 47:1980: "For the purposes of this Part, the following terms have the meanings ascribed to them in this Section: * * *.

"(6) 'Real property' means all things fixed and immovable by nature, destination or object, or disposition of law, whether owned or leased for a definite and specific term stated, or which are continuously used or operated in Louisiana (such, illustratively, but not exclusively, as real estate, depots and station houses, buildings, tracks, repair and other shops, storage and other warehouses, excavations, channels, pole lines, docks, piers or any structure or construction of a permanent or quasi-permanent character)."

"(8) 'Other personal property' means all other property, corporeal or incorporeal, not embraced within the definitions of 'real property' or 'movable personal property' and not immovable by nature or by disposition of law, which are so owned, leased and so operated or used (such, illustratively, but not exclusively, as material, supplies and fuel, leased rail, machinery, tools, furniture and fixtures, scales, pumps, inclines and cradles, bridges, not included in track valuation,

water wells, telephone and telegraph lines used solely in such enterprises and not available to the public, landing piers, docks, barges and all similar equipment)."

LRS 47:1981: "All real property as defined in R.S. 47:1980, of all persons resident or nonresident whether locally domiciled or not, and here doing business as a common carrier, public utility or howsoever engaged in public service for hire, charge or compensation, shall be assessed by the tax commission and by it certified to the parishes, where such property is actually and permanently situated and located, and there subject to such state, parish, municipal and other assessment district taxes as are authorized by law."

LRS 47:1982: "Ferry boats, boats, tugs, barges or other watercraft and all such property used in connection with the water transportation of persons or property of all kinds and character between termini situated in more than one parish or municipality as defined above, shall be assessed proportionately in each such parish or municipality by the assessing authorities thereof and there subject to taxation by such parish or municipality; provided, that where such ferry boats and such water transportation equipment are situated and operate only within the boundaries of such parish or municipality such property shall be so assessed and taxed therein only."

LRS 47:1983: "All other personal property, as defined in R.S. 47:1980 (8), of all persons resident or nonresident, whether locally domiciled or not, and here doing business as a common carrier, public utility or howsoever engaged in public service for hire, charge or compensation, which is here so owned, leased and here so used and operated, shall be assessed by the tax commission and by it certified to the parish or municipality where it is principally kept, stored or located, and there taxed as is real property defined above."

LRS 47:1985: "The tax commission is authorized and empowered to correct or change the assessment of any public service corporation or other property owner, when the assessment is made directly by the tax commission, in order to make the assessment conform to the true facts. In order to correct or change any such assessment, it shall only be necessary for the tax commission to issue instructions to the assessor to make the change upon the assessment roll, and in the event the assessment roll has been delivered to the tax collector, then to direct the tax collector to make such change upon the roll in his possession and to collect taxes according to such change."

LRS 47:1989: "The value of all taxable property in the state shall be fixed by the tax commission. The assessors shall make up the assessment lists in the manner and method prescribed by the tax commission and shall deliver to the tax commission copies of such lists and abstracts thereof as may be required by the tax commission. The assessors shall furnish the tax commission all data and reasons governing them in fixing valuations and if necessary any assessor shall appear before the tax commission at its domicile or elsewhere or before any member or person authorized to represent the tax commission elsewhere. The tax commission shall pay the actual sworn and itemized expenses of any assessor required to appear outside of his parish.

"The tax commission may require individuals, companies, partnerships and corporations to make reports to the tax commission, giving trial balances, a full and complete description of all taxable property owned, its cost, its age, the value at which it is carried on the books, and such other information as the tax commission may require in the form and at the time to be prescribed by the tax commission. Copies of such reports may be furnished parish assessors whenever the tax com-

mission deems it useful and necessary. All such reports shall be considered confidential and shall be used by the tax commission and the assessors only for the purpose of securing a correct assessment and shall not be subject to inspection by the public."

* * * * *

"The tax commission shall fix the percentage of the actual cash valuation upon which the state taxes must be collected after the actual cash valuation for the whole state has been fixed in order to realize necessary revenues, according to legislative appropriation. The percentage of actual cash value upon which state taxes are to be collected shall be so fixed that the taxes collected thereon do not exceed such legislative appropriation after making allowances for a proper percentage in the failure of collections and after deducting from the total amount of the legislative appropriation, income from all sources other than property taxation. The tax on property shall not exceed the amount thus indicated.

"The lawful authorities of each parish or other subdivisions levying, assessing and collecting taxes, shall have full liberty to levy taxes on, and fix valuations at, less than actual cash valuation as they deem fit, provided that the percentage of the actual cash valuation of the property assessed in any parish, shall not fall below twenty-five per centum (25%) of the actual cash valuation as fixed by the tax commission; provided further, that for local purposes the percentage shall operate equally and uniformly on all taxable property within the parish or other local subdivision on the basis of the actual valuation fixed by the tax commission; provided further, that in all levee districts, drainage districts, or other special taxing districts extending over more than one parish, levee taxes, drainage taxes, or other special taxes shall be levied and collected on a percentage of actual cash

value fixed by the tax commission. The commission shall confer with and advise the assessors about valuation of property for other than state purposes, when requested by them.

"The assessors shall extend on the lists the actual valuation of property as fixed by the tax commission either by classes or in particular instances, and extend thereon the percentage of such valuation upon which the state taxes shall be collected."

LRS 47:1990: "The tax commission may change or correct any and all assessments of property for the purpose of taxation, in order to make the assessments conform to the true and correct valuation, not to exceed its actual cash value. Such change or correction may be made by the tax commission at any time before the taxes levied have actually been paid.

"In order to correct or change any such assessment, it shall only be necessary for the tax commission to issue written instructions to the assessor to make the change upon the assessment roll, and in the event the assessment roll has been delivered to the tax collector, then to direct the tax collector to make such change upon the tax roll in his possession and to collect taxes according to such change. Whenever the tax commission shall make any change or correction in an assessment, it shall at the same time forward to the auditor a copy of the instructions furnished to the assessor or tax collector. A copy of these written instructions shall be forwarded by the tax commission to the taxpayer by registered mail, and such written instructions, together with the return receipt of the taxpayer therefor, shall be sufficient notice of such change.

"The written instructions issued as above provided by the tax commission to the tax collector shall authorize him to collect all taxes according

to such change, and shall be his authority to make the necessary deduction or increase on his tax roll and in his settlement for taxes with the auditor."

LRS 47:1998: "Any taxpayer in any instance where he shall be dissatisfied with the action of the parish board of reviewers in refusing to make a recommendation with respect to an actual cash valuation to the tax commission or with the tax commission upon its refusal to comply with such recommendation, or in regard to the actual cash valuation fixed by the tax commission, may resort to the district court for review of such action * * * ."

* * * * *

"The assessor shall bring suit, when necessary, to protect the interest of the state, and shall also have the right of appeal and such proceedings shall be without cost to him or the state."

The first issue which I think should be considered is plaintiffs' complaint that the Tax Commission had no legal rights, authority or capacity to issue its order of October 17, 1952, cancelling from the miscellaneous property roll an assessment made by the assessor of the bridge property and initially making a direct assessment of the property on the public service rolls of that Parish.

Under LRS 47:1981 the Tax Commission shall make direct assessment of public utilities. Is the Vicksburg Bridge property a public utility or so engaged in public service for hire, charge, or compensation as to make it directly assessable by the Louisiana Tax Commission?

It has been held that a bridge which crosses railroads only erected by the City of Wilkes-Barre and the County of Luzerne (Pa.) and the railroads across railroad lines is a public utility. *City of Wilkes-Barre v. Pennsylvania*

Public Service Commission, 63 A. (2) 452.

Bridges, which the Congress granted private companies the right to construct across a navigable river between two cities by acts specifically prescribing conditions under which they should be maintained and operated, were held to be public utilities subject to the rate-making power of the Secretary of War. 33 USCA 494; *Clarksburg-Columbus Short Route Bridge Company v. Woodring*, 89 Fed. 2, 788. In that case there were two bridges across the Ohio River forming the boundary between West Virginia and Ohio constructed and operated under similar laws to the Act Number 170 by which the Congress granted consent to construct and operate the Vicksburg Bridge.

Operator of a toll bridge, whether person, firm or corporation, is by express definition constituted a public service corporation and subject to the provisions of Public Service Commission. *Shrader v. Steubenville, etc.*, 99 SE 207.

A public service company is one engaged in a business of such nature as to clearly distinguish it from those purely private persons and concerns that may conduct their own business in their own way. *Dunn v. Western Union Telegraph Company*, 59 SE 189.

"Public Service" is the business of operating some commodity * * * such as transportation, communication * * * where the exercise of the calling involves some legal privilege of a nature of a virtual monopoly. *Richter v. City of Lincoln*, 285 NW 593. See also *Attorney General v. Haverhill Gaslight Company*, 101 NE 1061; *Philadelphia Rural Transit Company v. City of Philadel...* 159 A. 161.

The fact that Warren County leases the use of part of the bridge to railroad, telephone and pipe line companies, which are all admittedly public utilities, would not in itself result in the bridge becoming a public utility by these leases alone, but in this case Warren County operates the bridge within the provisions and restrictions of a legislative act for public use and it requires all public users to pay a stipulated toll fixed and/or approved by the Secretary of War, an administrative agency of the United States Government. This latter fact does constitute a public use of the bridge and the engaging in public service for hire so as to classify the bridge a public utility. The whole property must be classified as a unit. The predominant use of the bridge is as a toll highway. Counsel for plaintiffs point out that the revenues in 1952 from the highway tolls of $952,400.00 amounted to considerably more than twice as much as the amount received from railroad and other rentals, $445,770.00. For tax purposes in Louisiana the bridge may be considered as privately owned. If the bridge were owned and operated by Madison Parish, the fact that users of the highway portion paid tolls would not render the bridge assessable as a public utility because of our constitutional mandate against levying taxes on property owned by the public, but the bridge being privately owned it is assessable as a public utility for the same reasons that a local water company and telephone company property would be assessable as public utilities. Therefore, under the same reasoning of *People v. Atcheson, Topeka and Santa Fe Railway Company*, 80 NE 272, and *St. Louis Bridge Company v. Becker*, 22 NE (2) 954, the bridge is assessable by the Tax Commission. In both cases referred to each bridge was assessed as a unit according to its principal use—a railroad bridge. Here the principal use is as a highway toll bridge and it must be assessed as a

utility by the State Tax Commission.

I do not mean to infer that the status of the bridge would switch from a public utility to a nonpublic utility depending upon whichever is greater, the railroad and other rentals or the highway tolls, and I mention the amount of tolls as compared to the rentals in order to emphasize the fact that it is a facility in great demand and predominantly a highway toll bridge.

Counsel for plaintiffs further contend that to hold this bridge under the circumstances prevailing here subject to a direct assessment by the Louisiana Tax Commission would be "to construe sec. 1990 as giving the Tax Commission the power to directly assess any and all property of which the public has any use," such as hotels, filling stations, storage lots, restaurants, cafeterias, laundries, tourist homes, picture shows, bowling alleys, pool and billiard halls, theaters and thus supplant the local assessors entirely as to all such property. In my humble opinion there is no weight to that argument. In the first place, that part of section 1990 which empowers the Tax Commission to change or correct all assessments refers to valuation solely and in that respect the Tax Commission has the final word on assessment valuations, save judicial review. In the second place, the Tax Commission does not derive its power to make direct assessments of local property from section 1990, but from section 1981. In the third place, under section 1981 the kinds of property subject to direct assessment by the Tax Commission are specified and limited as being such real property as defined in section 1980 of persons "either doing business as common carrier, public utility or howsoever engaged in public service for hire or compensation * * *." Perhaps a hotel, restaurant, and other busi-

nesses mentioned by counsel, may be said to be serving the public for hire or compensation, but such businesses as referred to by counsel are not "common carriers or public utilities engaged in public service * * * ." To paraphrase and give reasonable construction to section 1981, simply stated, would make it read: "All real property of persons here engaged in public service in any manner as a common carrier or public utility shall be assessed by the Tax Commission." The terms "common carrier" and "public utility" are not defined by the Constitution or Statutes, but I believe the terms are commonly understood to be such businesses the operation of which is subject to control and supervision in some particular under a franchise or certificate of public convenience and necessity by some governmental administrative agency. The approval or the right to approve or fix the rates, tolls, tariffs, or whatever may be the charge or compensation, is supervision sufficient to bring the operation of the business under the classification of a public utility. Under the doctrine of *ejusdem generis* the only property which can be directly assessed by the Tax Commission by the provisions of section 1981 where it says that "all real property * * * howsoever engaged in public service for hire, charge or compensation," is limited to a common carrier or some other kind of public utility engaged in public service, and nothing more. The businesses named in paragraph (6) of section 1980 are by the very language there used merely illustrative of many kinds of public utilities. While this utility is not subject to the regulatory authority of either State it does come under the authority of the Secretary of War. Public Law 170 gives the operator of the bridge the right to fix the toll until changed by the Secretary of War, which is the same as if fixed by the Secretary of War. Its operation is a virtual monopoly under a Federal fran-

chise. I believe this bridge is a public utility.

Counsel for plaintiffs further contend that the assessor having listed this bridge property on his miscellaneous property roll the Tax Commission had no authority to take it off that roll and place it upon another tax roll at a lower valuation, particularly after the assessor's rolls had been filed with the tax collector. In support of that contention counsel cites *Southern Amusement Company v. Jennings*, 157 So. 720, and *Frost Lumber Industries v. Pickell*, 159 So. 316. Both these cases hold that the Tax Commission could not change an assessment after the rolls are approved and filed with the tax collector. Both of those cases were concerned with assessments and taxes of dates prior to the enactment of Act 18 of the 2nd Extra Session of 1934, which amended LRS 47:1990 in order to permit changes after the rolls were filed with the tax collector. The court held in *Bodcaw Lumber Company v. Jordan*, 14 So. (2) 98, that the Commission could not make the change after the taxes were paid.

Plaintiffs' counsel look and refer only to section 1990 and failing there to find authority for the Tax Commission to change the nature of this assessment (by reclassification of this property) they make the argument that the Tax Commission has none and contend that the only change which the Tax Commission is authorized to make is in the assessment valuation in order to make the assessment conform to the true and correct value in the event the assessor has made an error. As to the time element, that is, ordering the change after the rolls have been filed, that section by the amendment of 1934 authorized a change in assessment valuation "at any time before the taxes levied have actually been paid." As to

the authority of the Commission to change the classification from the assessor's miscellaneous property roll to the public service roll, there is no provision of the law in particular words covering that exact action, but the language of a statute on the subject must be given reasonable even though strict interpretation. Section 1981 authorizes the initial direct assessment of public utilities by the Tax Commission. Section 1985 empowers the Tax Commission "to correct or change the assessment of any public service corporation or other property owner when the assessment is made directly by the Tax Commission in order to make the assessment conform to the true facts."

In *Southern Amusement Company v. Jennings*, 157, So. 720, the Court said, in part: "Act No. 120 of 1918 is presumed to have some meaning. As to what it means, the answer is that it means what it says, and it says in Section 1 that the board of state affairs (now the Louisiana Tax Commission) is authorized to correct or change the assessment of "public service corporation or other property owner, when the assessment is made directly by said Board, in order to make said assessment conform to the true facts."

The language of Act 120 of 1918, now carried in section 1985, is undoubtedly intended to authorize any change necessary to make the assessment conform to the true facts as to classification and valuation, remembering all the while that the change shall be only as to property directly assessable by the Commission. Of course, the Tax Commission should have certified to the assessor before the assessor made up the rolls that this property would be assessed by the Commission, so that the assessor under that certification could have listed it on the public

service rolls without the assessor giving it any valuation and the Commission could have entered its own assessment valuation when the rolls reached the Commission for review. But the Commission did not certify this property as subject to direct assessment by the Commission and in making up the rolls in due course the assessor listed the bridge property in his miscellaneous property rolls as he had done since 1936. In 1952 the assessor gave the bridge property an assessment valuation of $3,150,000.00 as he had done in 1950 and 1951. The listing and valuation of this bridge property by the assessor on his miscellaneous property rolls was erroneous and unlawful. When the rolls reached the Commission there was no legal and proper assessment of this property on the rolls and the Commission proceeded in 1952, even though belatedly, to make a direct assessment and valuation of the bridge property on the public service rolls, as it had the right and duty to do and it gave the proper notice of that action. The erroneous assessment made by the assessor on his miscellaneous property rolls was no assessment at all and certainly did not estop the Commission from making a legal and proper assessment as to classification and valuation. In *L and A. R. Company v. Bailey*, 40 So. 358, the assessor made assessment of railroad property. By Act No. 122 of 1900 under the provisions of article 226 of the Constitution of 1898 the Legislature withdrew from the parish assessor the assessment of railroad properties and placed assessment thereof in the State Board of Appraisers. In that suit the railroad refused to pay the tax claiming the same to be illegally assessed and the tax collector advertised the railroad property for sale. Plaintiffs sought an injunction against the tax collector. The State Board of Appraisers had not made the assessment as the Act of 1900 empowered it to do and in granting the injunction the Court said:

> "The failure of the state board to assess the property of a railroad or railroads in a particular parish did not confer upon the assessor the duty or the right to make such assessment himself."

See also *Crowell and Spencer Lumber Company v. LaFleur*, 69 So. 170.

Why the Commission was derelict in its duty to make the proper direct assessment of this property in previous years is not explained. It is certain, however, that an erroneous and unlawful assessment, even if made year after year, by the assessor, by listing a public utility on his miscellaneous rolls does not change the law and the Commission does not lose its authority and power to place such utility on the public service rolls and to directly assess the property at any time and in ANY YEAR before the taxes are actually paid. In view of the provisions of the law giving the Commission supervision over all assessments and the right to change the assessment valuations made by the assessor, I fail to see any practical importance in this issue as to whether the Commission has the power to directly assess this property on the public service rolls. Neither can I see any difference in the end result for the reason that the Commission under section 1990 has the power to change the assessor's valuation of any property. The judiciary will not interfere with the classification and valuation of property by the Tax Commission made under Legislative authority unless the Commission's action has been unreasonable and arbitrary. 51 Am. Jur., page 230, sections 173, 174.

The next step in this consideration is to determine what portion of the bridge is located in Madison Parish. It does seem to me that competent engineers and experts could make that calculation at least reasonably definite.

The boundary line between the State of Mississippi and the State of Louisiana is designated as the thalweg of the river. Mr. Leo Odom, a witness for the plaintiffs, defines "thalweg" as the deep point in each cross section of the river (Tr. 591) and that its literal meaning is "deep way" (Tr. 592). The thalweg of a river is not necessarily equi-distant from the opposite banks of the river. At the site of this bridge the thalweg of the river (the State boundary line) is much closer to the Mississippi side of the river than to the Louisiana side which places the greater portion of the bridge in Louisiana. Mr. Odom says that the bridge is 8,556 feet long from abutment to abutment and that two-thirds of the main span is in Louisiana and one-third in Mississippi. (Tr. 594 and 611). He says that 16.8% of the total length of the railroad portion is on the Mississippi side of the thalweg and 83.2% is on the Louisiana side, but that the highway portion would be different. (Tr. 593). The cost of approaches is much less than the cost of the superstructure of the main span over the river proper. (Tr. 612). Mr. Crouch says the highway portion of the bridge has an over-all length of 10,036 feet of which 8,608 feet is on trestles and river span and the balance is on approaches; that the over-all length of the railroad track is 15,836.6 feet, 8,556 feet of which is on trestles and river span and the balance on earth and tunnel approaches. (Cr. 6, page 10). These figures are more confusing than helpful. There are various estimates and opinions in the record as to what portion of the bridge is in Louisiana. Mr. Crouch, at page 16 of his report, says: "Adjusting the estimate made by Howard, Needles, Tammen and Bergendoff to include subsequent additions and deductions indicates an approximate percentage of the bridge construction in each state as follows: Louisiana, 70%, Mississippi, 30%." The Louisiana Tax Commission

used 70% in the calculation of the assessment valuation of the portion of the bridge in Louisiana, and I believe it is as nearly correct and is as fair a division of the value of the bridge as a unit as it is possible to determine under the evidence in this case.

Plaintiffs want the assessment valuation of the Louisiana portion left at $3,150,000.00, the amount fixed by the assessor, on whatever assessment roll the Court may decide the property should be listed. Defendant Warren County contends that the assessment valuation of that portion should be further reduced to One Million Dollars, but in the alternative that the Tax Commission's figure of $1,800,000.00 should be sustained. Defendant Tax Commission wants its assessment valuation sustained.

Our constitution provides that all taxes shall be uniform upon the same class of subjects in the limits of the authority levying the tax and that no property shall be assessed for more than its actual cash value ascertained as directed by law. Const., X, Sec. 1. The value of all tax property in the State shall be fixed by the Tax Commission, but the assessment valuation may be fixed at a percentage of the actual cash value. LRS 47:1989. The actual cash value must be ascertained by considering every element of value. LRS 47:1702. Elements of value of this property are not necessarily limited to the same factors applied in valuing some other class of property. Original cost, reproduction cost, depreciation, obsolescence, earnings, location, saleability, and perhaps other elements may be important according to the type and use of the property under consideration. There is no formula, no accepted or recognized rule or manner of calculating and averaging up the values and weights of the respective elements to be considered in order to arrive at an amount

which will truly represent the cash value of this bridge for tax purposes. That combination of figures and formulae are not dependable as a means of determining the cash value of the bridge is well demonstrated in this case. The plaintiffs present an imposing array of such combinations of elements, giving them respective values and weights which result in different total bridge assessment valuations ranging from $2,100,000.00 to $3,898,402.14. (Tr. 362; statement attached to D. Hall Allen's deposition 10/10/52 as Exhibit-A-Warren County v. Hester, U.S. District Court and Exhibit-Zatarain-P of Warren County Exhibit-4). Mr. Crouch says that "the two general types (of combinations) are arithmetical and weighted and it is limitless as far as the number of factors you can put in to make up the average." (Tr. 363). On the other side of the picture counsel for defendants in their brief as Appendix C present equally formidable arrangements of figures, factors, tabulations and formulae which produce a dozen or more assessment valuations of this one property ranging in varying amounts from $872,199.30 to $3,412,500.00.

In *Standard Oil Company v. Southern Pacific Company*, 268 U.S. 146, the Court said that, "It is to be borne in mind that value is the thing to be found and that neither cost of reproduction new, nor that less depreciation, is the measure or sole guide. The ascertainment of value is not controlled by artificial rules. It is not a matter of formulas, but there must be a reasonable judgment having its basis in a proper consideration of all relevant facts."

And from *Northern Pacific Railway Company v. Adams Company*, 1 Fed. Supp. 163, I quote:

"To be sure there must be no arbitrary or

> capricious exercise or discretion on the part of the assessing officials. Their quasi-judicial discretion like judicial discretion itself, must be exercised within legitimate limits * * *. Valuation of property for taxation is not a formulaic process * * *. The facts and circumstances of the particular case must ever be kept in mind, and the performance of the task must be guided by legally permissible principles."

The members of the Louisiana Tax Commission, being a quasi-judicial body, cannot be required to disclose the method or process by which it arrived at a unit valuation of $6,416,333.33. But the members of the Commission testified in this case and their depositions in cases pending in other jurisdictions on this subject are on file herein. The members of the Commission testified that they took into consideration all elements of value. The formula they compiled gave an assessment valuation of $1,800,000.00. Counsel for plaintiffs argue that the disclosure of this formula is tantamount to saying that they discarded all other elements and confined their considerations to the factors named in the formula. The Commission members say that the formula referred to is just one of the methods of approach used by them in giving consideration to all relevant facts. The Commission had available to them surveys and studies on the subject. It is just as easy to believe the testimony of the three members of the Commission that they did consider reproduction costs, earnings, depreciation, and so forth, and that the ultimate result of these considerations together with the factors of the formula still leaves their conclusion of assessment value at $1,800,000.00, as it would be to accept the testimony of Mr. Crouch and Mr. Odom who state that their opinions of the 1952 value of the bridge were reached after considering various factors named by them.

The Tax Commission in 1952 was composed of three persons, one of whom, Mr. Jacobs, the chairman, was an engineer of many years experience. He served as superintendent in the construction of a large bridge in Louisiana. There is a railroad bridge at Shreveport, referred to in the evidence, which the Commission has valued and initially assessed as a public utility for many years. The Tax Commission each year reviews the assessment and valuation of every piece of taxable property in the State of Louisiana. It must initially assess and value every public utility property in the state. The Commission has great power of discretion. Its duties are extremely arduous. It is certainly safe to assume that its members were appointed because of their particular qualifications in the field of property valuation for assessment and taxation purposes. Because of this and because there is a general presumption in favor of the correctness of the actions and decisions of an administrative body, the Court is justified in according greater weight to their testimony, valuation and decision in this instance than that lent to the testimony and opinions of those not so situated.

In the case of *People v. St. Louis*, 191 NE 300, the Court in its opinion said that, "The fact that there may be a difference of opinion as to value of property between the assessing authorities and the court does not justify interference on the part of the court." Of course, the Court hastened to add that when the evidence shows that the taxing officials obviously acted "unfairly, deliberately and wilfully and in gross defiance of the rights of the property owner," such conduct would amount to constructive fraud and the courts would step in. There is certainly no evidence in the case now before this Court which could in the remotest fashion be construed to attribute to the members of the Tax Commission an unfair

attitude either toward defendant taxpayer or the complaining plaintiffs.

Cooley in his work on Taxation, Vol. 1, p. 528, says that, "Classification for taxation is not reviewable by the courts unless palpably arbitrary." The same rule of law applies to valuations by taxing authorities as well.

In *Adams v. Pickell, et al*, 135 So. 731 (La. Tax Commission was defendant) the Court said:

> "Under the law, the assessment as fixed by the defendant is presumed to be correct, unless and until the plaintiff introduces satisfactory proof to the contrary, so that the assessment of plaintiff's property as it appears on the tax rolls that were filed in the clerk's office is *prima facie* proof of its correctness. As a part of the taxation machinery of the state, there has been constituted what is known as the Louisiana Tax Commission. This body has the right under the law, subject to the supervision of the courts, to direct and control the tax assessor in the matter of fixing the assessment valuations of all the property in the respective parishes."

Mr. Crouch of the American Appraisal Company says in his report and testimony that no one method has been devised that will estimate the fair value of any particular existing property. This statement is corroborated by Dr. French and others. The different arrangements of figures in the many tabulations made by counsel for both sides resulting in as many valuations amply demonstrate the truth of that statement. I think all the witnesses on the subject agree that a sound appraisal should give consideration and weight according to their respective importance to all various elements and factors which might aid in finding the true value. Mr. Crouch sug-

gested several methods of approach. First, the cost approach, which is the cost of replacement less depreciation; second, income approach, by calculating the net income in accordance with prevailing rates on properties of comparable risk; third, the comparative approach, which compares the subject property with actual sales of other comparable property, and, fourth, the stock and bond method, "in which the selling price of the bonds and capital stock outstanding are construed to reflect the public's appraisal of the value of the property."

This witness testified that he gave mental consideration and varying weights to all of the factors named, but he gave us no work sheet, no schedule of material costs—nothing to show that he did not pluck his figures out of the air. He came up with an estimated replacement or reproduction cost of $15,385,000.00 as of January, 1950, of $16,833,500.00 as of January, 1951, and of $17,340,-000.00 as of January 1952, an increase of about Two Million Dollars in two years. I just do not believe that to be a true picture. Taking depreciation from the January 1952 total and with consideration of all factors and elements affecting the value he estimated the depreciated reproduction cost at January 1952 at $12,500,000.00. (Crouch Exhibit-Seven, page 10).

Where our law provides that earnings should be an element of consideration in determining actual cash value of property for assessment purposes, I do not believe that as to this property the earnings should be capitalized to find an amount of value sufficient at the prevailing rate to produce the revenues which the property currently earns, and accept the amount found as the value of the bridge. I believe that the only consideration and weight to be given earnings here should be merely as evidence of

the fact that the bridge has value as a going concern or that there is demand for its use, thereby having value as against a property completely static and serving no useful purpose. The earning capacity of this bridge is entitled to some, but not great weight in determining its cash value, because a toll free bridge producing no revenues would no doubt be in greater demand and use than it is now with toll charges producing revenues of more than $1,000,000.00 a year.

The reason I say the earnings from traffic tolls and rentals should not be capitalized to find an amount indicative of the value of the bridge, is that the evidence shows that the bridge was not acquired as a commercial investment for profit. All net earnings now go to retire outstanding bonded indebtedness. As the debt is reduced the tolls will be lifted. When the debt is paid in full, certain traffic will cross free and enough rentals collected from lessees to maintain the bridge and pay the taxes. Therefore, the income from the use of this facility is designedly a temporary factor.

In this connection I quote the following from *People v. City of St. Louis*, 10 NE (2) 369:

> "Bridge property is *sui generis*. It has no market value and is not affected by the principles of supply and demand. Evidence of what it cost or what amount would be required to reconstruct it would not conclusively establish its real and actual value. It is property the value of which is largely determined by its location, its surroundings and the use that can be made of it. *Keokuk and Hamilton Bridge Company v. People*, 161 Ill. 514, 44 NE 206; *People v. St. Louis Bridge Company*, 357 Ill. 245, 191 NE 300. The earning power of a bridge is an important element in determining its actual value. *People v. St. Louis Merchant's*

Bridge Company, 291 Ill. 95, 125 NE 752 * * *. The charge of tolls for the upper deck was instituted by the City of St. Louis, pursuant to ordinance, to pay bonds and interest authorized to increase finances for the relief of the poor of that city, and was apparently intended to be for a limited period. It might, therefore, not be proper to capitalize the earnings created in this manner the same as average earnings might be capitalized for the life of the bridge."

There is no sale of other comparable property as an index to its market value.

The Act of the Congress (Public Law 170, Sixty-Ninth Congress) granting authority to construct and operate the bridge provides in section 4 that after the completion of the bridge either the State of Mississippi or the State of Louisiana or any political subdivision of either State within or adjoining which any part of the bridge is located may at any time acquire the bridge by purchase or condemnation. In 1947 Warren County acquired the bridge by purchase at a consideration sufficient to retire the outstanding bonded indebtedness which was about $6,750,000.00.

In this case the stock and bond approach is of no help for the reason that the $7,000,000.00 bond issue in 1947 was only in sufficient amount to provide funds to retire outstanding bonds and to pay off all indebtedness of Warren County's author in title, and the margin of equity if any between the amount of the bond issue and the total value of the bridge played little or no part in the transaction.

The Act further provides that at any time after the expiration of twenty years after its completion if it is

acquired by condemnation the amount of compensation to be allowed shall not include good will, going value or public revenues or benefits, but shall be limited to the sum of (1) the actual cost of construction less reasonable deductions for actual depreciation, (2) the actual cost of acquiring such interest in real property, (3) actual financing and promotion costs not to exceed ten per cent of the cost of construction and real estate, and (4) actual expenditures for necessary improvements.

The condemnation formula prescribed in the Act does not help us any and is entitled to no weight for the reason that Warren County having acquired title to the bridge by purchase before the expiration of the twenty year period after completion of the bridge, and said Warren County having no legal right to dispose of the bridge, title to the bridge cannot be acquired by condemnation under section 4. While there is no evidence on the subject, it is possible that the Congress in prescribing this formula for condemnation intended to provide a means for public acquisition at a price not affected by possible inflationary or economic conditions. This view has some support in the well known practice or rule of the United States Government in paying no more than an amount equal to its assessed valuation to acquire private property for flood control purposes, such as the construction of levees and spillways. Therefore, the condemnation value should be given no consideration.

By use of the index of construction costs prepared and published by the Engineering News Record and as a result of careful inspection and study of the bridge and study of the unit price of various elements and factors, Mr. Leo Odom, an engineer of high repute, gave us his estimate that reconstruction costs new as of January

1950 would be $14,400,000.00 (Tr. 585, *et seq.*). The cost index was slightly higher for 1951 and 1952, but Mr. Odom said that unless he could see an increase in revenues he would not recommend to a prudent investor a higher amount in 1952 (Tr. 597).

Plaintiffs took a deposition by written interrogatories before a Notary Public in Washington, D.C., of John E. Hansburry, who is employed by the Interstate Commerce Commission as Acting Director of the Bureau of Valuation (Plaintiff - Exhibit - C - June 17, 1953). This witness outlines a history of many years experience in estimating values of property for rate making purposes within the functions of the Interstate Commerce Commission. At page 5 of his deposition he states that for rate making values the cost of reproduction, the cost of reproduction less depreciation, present value of land and rights, working capital, going concern, and other pertinent elements are considered and weighed. He further states that for sale or tax assessment purposes the value and weights would be different. This witness made no inspection of the bridge, but gave his estimate of "spot reproduction cost new of this bridge, of the portion in Louisiana." Inasmuch as the experience of this witness is in the rate making field and not for purposes of local tax assessment valuation, it is impossible to accord very much consideration to his testimony, particularly in view of his own statement that the two fields are different. Defendants made a number of objections to his testimony because his answers pertained to the rate making field on which ruling was withheld and I think obviously these objections should be sustained.

The defendants offered the testimony of Mr. T. J. Cambern, a member of the engineering firm which was

active in the construction of the bridge for a short time and then became again active as consultants in 1940 since which time his firm has made periodic inspections of the bridge. When Warren County acquired title to the property this firm became the owner's consulting engineers in all matters pertaining to operation and maintenance. This witness outlines some trouble had with driftwood and river craft against the piers, some corrosion, bank shifts, movement of piers, and a number of other items which have to be watched carefully and continuously, and says that the bridge is somewhat out of date in design because of the increase in the standard for roadway facilities. He gives approximately 60 years as the life of the bridge from date of its completion. In March 1937, Mr. Howard, head of the engineering firm of which Mr. Cambern is a member, and a Mr. Thompson, who is not identified, made a study of the bridge, and their report thereon to the United States District Court in the Western District of Louisiana gave as their opinion that a reasonable life of the bridge from date of completion would be 75 years. This reports says that after detailed study of quantities and unit prices it was estimated that a replacement cost of construction, engineering, and so forth as of March 1, 1937, was $5,735,058.00. (Plaintiff-Exhibit-KK, page 9 and 28). This does not include land and financing. Mr. Cambern does not go into the present day valuation of the bridge in his testimony.

Let us now look at the trend of assessments in Madison Parish, Louisiana. In Crouch Exhibit-Six, page 17, is given the following tabulation of assessed valuations of the Vicksburg Bridge made by the assessor in that Parish from 1936 to 1950:

Year	Valuation
1930–35	Exempt
1936–40	$900,000.00
1941–42	$1,000,400.00
1942–46	$1,200,400.00
1947	$1,350,000.00
1948–49	$1,500,000.00
1950	$3,150,000.00

The assessor made the same valuation and assessment of the Louisiana portion of the bridge in 1951 and 1952 as of 1950. In 1950 and 1951 the assessment was unreservedly approved by the Tax Commission and the 1952 assessment was approved with the right reserved to give further consideration of the bridge item, which resulted in the Tax Commission's order of October 17, 1952, cancelling the assessment by the assessor and directly assessing the property on the public service rolls at $1,800,000.00.

From the official biennial reports of the Louisiana Tax Commission (Warren County Exhibit-8-A-J and Tax Commission reports on public service rolls of the Parish) it is found that in 1936 the Vickburg, Shreveport and Pacific Railroad main line trackage assessment in that parish was $708,280.00. This assessment was reduced some each year until 1952, when the valuation was fixed at $654,550.00. For 1936 the assessment of the Missouri-Pacific Railroad was $302,138.00. There was a small increase in the assessment of this railroad each year until 1952 when it was fixed at $350,790.00. It is also noted from these same reports that the mileage of the main line tracks of both railroads in the whole State of Louisiana remained exactly the same throughout the entire period from 1936 through 1952 and that the statewide total assessment valuations for both roads were re-

duced. The Vicksburg, Shreveport and Pacific Railroad had a total state-wide assessment valuation of $339,-200.00 less in 1952 than in 1936 and the three branches of the Missouri-Pacific Railroad had a total state assessment valuation of $9,176.00 less in 1952 than in 1936.

Madison Parish is principally an agricultural area with practically no industrial operations in the Parish. In 1936 the class A lands were assessed at $30.71 per acre for a total assessment value of $730,670.00. In 1951 the rate per acre had been reduced to $30.05 with a total assessment valuation of $738,400.00.

The class B lands were assessed at about $10.00 less per acre than class A and in 1951 the total assessment of class B lands was $12,330.00 less than in 1936.

Class C lands had a slight increase in the rate per acre and an over-all gradual increase of approximately $70,000.00 from 1936 to 1951.

One of the witnesses explained that any change in land valuations was due largely to change in classification and addition of some improvements.

From an original assessment of $900,000.00 the assessment valuation of the bridge in question was increased by the parish assessor $100,000.00 in 1941, $200,-000.00 in 1943, $150,000.00 in 1947, $150,000.00 in 1948 and $1,650,000.00 in 1950. It is indeed singular that in a period of ten years the parish assessor made increases in this bridge assessment valuation amounting to two hundred fifty per cent (250%) over the valuation in 1940, when during the same period the assessment valuation of all other properties in that parish either remained approximately the same, or for some unexplained

reason was reduced. In my judgment the action of the assessor singling out this one taxpayer and in making the large increases in this one assessment without corresponding increases in other assessments was without doubt arbitrary and capricious. While the members of the Tax Commission did not say so, it is my belief that they recognized that the assessor had gone completely "overboard" in these increases and an adjustment had to be made.

Art. 10, sec. 1, of our state constitution and the 14th amendment of the Federal constitution provide for uniformity in tax levies on properties in the same class. While the language of these constitutional provisions indicate that it is intended only to limit to the same ratio of valuation or to the same tax rate all properties of each class, the brief of counsel for defendants herein cites cases which have granted relief from the action of assessors in giving one property greater percentage of full value than other properties, regardless of the class. Those cases are: *Cummings v. Merchants National Bank*, 101 U.S. 153; *Taylor v. L and N Railway Company*, 88 Fed. 350; *Raymond v. Chicago Union Traction Company*, 207 U.S. 20; *Sioux City Bridge v. Dakota County*, 260 U.S. 441; *Bohler v. Callaway*, 267 U.S. 479; *Greene v. Louisville and Interurban R.R. Company*, 244 U.S. 499.

The Tax Commission applied 40% as the ratio of full value in order to arrive at the assessment valuation of $1,800,000.00 and I cannot say there was error in that for the reason that the evidence does not make clear what ratio was employed in respect to other property on the public service rolls of that parish. There is evidence that 27.8% was found to be the ratio of assessment value to sales price of all other real estate in 1951.

As another approach to the bridge assessment, if we were to accept Mr. Odom's appraisement at $14,400,000.00 (which he said applied to 1950, 1951 and 1952), deduct 33% depreciation (1.5% per year for 22 years) and apply the same ratio (27.8%) of assessment valuation as that of all other real estate, on that portion of the bridge in Louisiana (70%), the net assessment valuation would be $1,877,500.00.

It is my opinion that there is no evidence in this record which even tends to support the allegations that the action of the Tax Commission was arbitrary, unlawful and unreasonable in issuing its order of October 17, 1952. There are various opinions and estimates of the value of the bridge in question and as to what the assessment valuation ought to be. I find the preponderance and weight of the evidence in favor of the affirmation of the action of the Tax Commission and of the assessment valuation fixed by it. 42 Am. Jur., sec. 626, p. 211.

Counsel for defendants argue that their exception of no cause of action should be sustained. It is my belief that plaintiffs' petition alleges a cause of action under the first sentence of LRS 47:1998. Quoting only the pertinent words the first sentence of that section provides that "Any taxpayer in any instance where he shall be dissatisfied * * * with the tax commission * * * in regard to the actual cash valuation fixed by the tax commission, may resort to the district court for review of such action." A taxpayer seeking relief under that sentence is not confined to "any taxpayer of such class" as he is if bringing an action under the next sentence of that section.

The evidence not having proven the pertinent allegations of the petition giving rise to a cause of action

the exception of no cause could very properly be sustained. I have preferred to discuss somewhat fully the issues and the law and will overrule the exception and let the decision rest on the merits.

For these reasons there will be judgment in favor of the defendants, rejecting plaintiffs' demands and dismissing the suit at plaintiffs' costs, and judgment will be signed accordingly.

Baton Rouge, Louisiana, this 4th day of October 1954.

JESS JOHNSON

Judge

APPENDIX "C"

SUPREME COURT OF LOUISIANA

No. 42,154

C. E. HESTER, ET AL
versus
LOUISIANA TAX COMMISSION, ET AL

On Appeal from the Nineteenth Judicial District Court in and for the Parish of East Baton Rouge, State of Louisiana—Honorable Jess Johnson, Judge Presiding.

MOISE, Justice:

This is an appeal from a judgment upholding the validity of the tax assessment of the Vicksburg Bridge made by the Louisiana Tax Commission.

The suit is a declaratory judgment action brought by the assessor, in conjunction with the local taxing authorities and tax beneficiaries of Madison Parish, Louisiana, in which the State of Louisiana has intervened as a plaintiff, through its Attorney General on direction of the Governor of the State, against the Louisiana Tax Commission and Warren County, Mississippi, owner of the Vicksburg Bridge which spans the Mississippi River between Vicksburg, Warren County, Mississippi and Delta Point, Madison Parish, Louisiana.

The 1952 assessment of $3,150,000.00 was identical with the assessments made for 1950 and 1951 by the Madison Parish Assessor. These assessments were listed and assessed for said tax years 1950, 1951 and 1952 with the unanimous approval of the Police Jury of the Parish

(sitting as a Board of Reviewers) and fully approved and certified by the Louisiana Tax Commission as a correct legal assessment of that portion of the bridge in Madison Parish, Louisiana. This was done after hearing and a denial of written protest filed by the taxpayer, who contended:

> First—that said bridge was tax exempt, ownership being in a public body; and
>
> Second—if not, that said assessment valuation was excessive.

In fact, Warren County, Mississippi contends that the Louisiana Tax Commission has the right, power and duty to assess this property, and that the Court should hold that it is within the province of the Louisiana Tax Commission to fix the amount of assessment. It prays for a judgment decreeing that the true and correct valuation of its property is not in excess of $1,000,000.00; and that alternatively the said assessed valuation should not exceed $1,200,000.00.

The Louisiana Tax Commission answered the petition, declaring that it has a supervisory jurisdiction; that it may change or correct any and all assessments of property in order to make the assessment conform to its true valuation, said change or correction to be made at any time before the taxes levied have actually been paid; that the Vicksburg Bridge falls in the category of property which **shall** be assessed by the Louisiana Tax Commission and must be included on the Louisiana Public Service Roll for 1952; and, that this assessment, which was cancelled and changed to $1,800,000.00 is binding on all parties concerned.

The historical background is pertinent.

In 1926 Congress enacted Public Law No. 170, which granted consent to the Vicksburg Bridge and Terminal Company (a Delaware corporation), its successors and assigns, to construct, maintain and operate a combined highway and railroad toll bridge across the Mississippi River between Vicksburg, Warren County, Mississippi and Delta Point, Madison Parish, Louisiana. This bridge was completed in April, 1930, and it has been in constant use up to the present time. The bridge issued and sold revenue bonds in a sufficient amount to pay the original cost of construction and financing.

Upon its completion, that portion of the bridge in Louisiana was exempt from the payment of ad valorem tax up to and inclusive of 1935. (Louisiana Constitution of 1921, Article X, Sec. 4, Para. 7).

Beginning in 1936, the Assessor of Madison Parish assessed that portion of the bridge in Louisiana on the assessment property roll for valuation fixed by the Assessor and approved by the Madison Parish Board of Reviewers and the Louisiana Tax Commission.

Warren County, a political subdivision of the State of Mississippi, acquired fee title to the bridge by purchase on April 30, 1947. The Madison Parish Assessor continued to assess the Louisiana portion of the bridge in the name of Warren County, Mississippi, which paid the taxes under protest and then sought by litigation in the federal and state courts to recover the amount paid.

On October 17, 1952, the Louisiana Tax Commission issued and sent to C. E. Hester, Tax Collector, and to other proper officials of Madison Parish, its order directing that the bridge assessment, in its entirety, be can-

celled from the general or miscellaneous property rolls; and, in lieu thereof, the Louisiana Tax Commission made a direct assessment of the bridge property in Madison Parish, Louisiana on the public service roll on an assessed valuation of $1,800,000.00. The order of the Tax Commission reads as follows:

State of Louisiana
Louisiana Tax Commission
Baton Rouge

Honorable C. E. Hester
Sheriff & Tax Collector
Parish of Madison
Tallulah, Louisiana

October 17, 1952

Dear Sir:

Under the provisions of Act 18 of the Second Extra Session of 1934, you are hereby directed and instructed to make the following changes on your assessment roll, for the year as indicated:

1952

Vicksburg Bridge Commission of Warren County Mississippi—Ward 2, Assessment No. 110
P. O. Box 908
Vicksburg, Mississippi

Cancel—Vicksburg-Delta Bridge, Miscellaneous Property totaling $3,150,000.00.

(The Louisiana Tax Commission is hereby cancelling the above assessment for 1952, under authority of Revised Statutes 47:1980 and Seq., because same was erroneously placed on the tax roll by the Assessor of Madison Parish.)

Ward—Public Service Roll—2

Add—Vicksburg-Delta Bridge, Miscellaneous Property, $1,800,000.00. Not assessed.

(The Tax Commission is placing the property of Warren County Bridge Commission, commonly known as the Vicksburg Bridge, on the Public Service Roll in the amount of $1,800,000.00, under the authority of Revised Statutes 47:1980 and Seq.).

This is your authority to make these changes; to collect the taxes in accord therewith; and to make settlement with the State of Louisiana as instructed.

We are this day forwarding a copy of this letter to the State Auditor, the Assessor of your Parish, and to the Taxpayer, for their information and guidance.

Yours very truly,

LOUISIANA TAX COMMISSION

(Sgd.) Chas. Zatarain, Member
(Sgd.) Edgar G. Mouton, Member
(Sgd.) R. E. Jacobs, Chairman

The taxpayer paid the tax under protest.

Thereupon, this suit was filed under Act 431 of 1948 and Act 22 of the Extra Session of 1948, Revised Statutes 13:4231, et seq. Plaintiffs prayed for a declaratory judgment decreeing that the 1952 assessment of $1,800,000.00 of the bridge property in Madison Parish, Louisiana—directed by the Louisiana Tax Commission—was arbitrary, erroneous, unreasonable, illegal, null and void; and that the only correct and lawful assessment of the bridge property in Madison Parish, Louisiana for the year 1952 was $3,150,000.00, as shown by the 1952 tax roll, lawfully made, approved and originally filed.

The Declaratory Judgment Act (Sec. 1, Act 431 of 1948, and Sec. 1, Act 22 of the Extra Session of 1948;

Revised Statutes 13:4231) declares that the declaration by the Court may be affirmative or negative in form and effect, and that such declaration shall have the force and effect of a final judgment or decree.

We have cited the historical background and the facts, as shown by the record. It is now for us to state the law to which the facts apply.

In 1951, in the case of *Warren County, Mississippi v. Hester*, 219 La. 763, 54 So. (2d) 12, this Court held that this same bridge was not public property within the provisions of the Louisiana Constitution exempting from taxation all public property. (Constitution, 1921, Article X, Sec. 4, Subs. 1-15, as amended). This Court held that the bridge was not dedicated to public use and stated:

> " * * * If the revenue derived from the tolls of the bridge were being used exclusively for its maintenance and economic operation, it might be reasonable to rule that there has been a dedication. But those are not the facts of the case. **Actually, plaintiff is employing a substantial part of the revenue derived from tolls charged the general public to liquidate its obligation for the purchase price of the structure.** Indeed, to hold that this bridge was dedicated to public use in 1948 merely because plaintiff evinces the intention of making it tollfree at some future date, when the truth is that each and every person using it is required to pay, would be unrealistic, to say the least."

Therefore, under the above ruling, the bridge is not a public utility.

This bridge is sui generis, because it is the only property of its kind in the state.

An analysis of the applicable assessment laws of

Louisiana will show that the Vicksburg Bridge property is not the kind of property the Louisiana Tax Commission has the right and power to assess. This is particularly true when the assessment is initially and directly made by it. In our discussion, all reference to the Revised Statutes will be made to Title 47 and only section numbers will be given. These are quoted in the state's brief, and we are adopting them as the applicable law.

Section 1956 authorizes the Tax Commission to require the assessors to make up assessment lists in a formal manner and according to a method to be prescribed by it.

Section 1957 prescribes that the assessors shall be responsible, under the supervision of the tax commission, for listing and assessing all property within their respective parishes—

> **" * * * except such property as is subject to direct assessment by the tax commission."**

Section 1979 is a matter of substance. It defines what property is subject to direct assessment by the tax commission, and the first paragraph thereof reads:

> **"The actual cash valuation and assessment of gas and oil pipe lines, electrical transmission lines, water and gas distribution systems, railway, telegraph, telephone, sleeping car, and express businesses throughout the state shall be fixed and assessed by the tax commission for all purposes."**

No mention is made of property such as we have in this case—a toll bridge.

Section 1980 makes no reference to bridges. The only time the word "bridge" is used is in connection with

other personal property of railroads, **where bridges are included in track valuation.**

Section 1982 is a qualification of the rule concerning assessments, because it deals with ferry boats, watercraft, etc. This section provides that these **shall be assessed proportionately in each such parish or municipality by the assessing authorities thereof.**

Section 1985 provides:

> "The tax commission is authorized and empowered to correct or change the assessment of any public service corporation or other property owner, when the assessment is made directly by the tax commission, in order to make the assessments conform to the true facts. In order to correct or change any such assessment, it shall only be necessary for the tax commission to issue instructions to the assessor to make the change upon the assessment roll. * * * "

Section 1987 provides:

> "The listing and estimation of the valuation of all real and personal property shall be completed by the assessor * * * on or before the first day of May in each year. * * * The assessors shall give notice in some newspaper * * * that the listing of the property has been completed and the estimated valuation * * * and that this list will be exposed in the office of the assessor. * * * "

Section 1988 provides:

> "The value of all taxable property in the state **shall be equalized** by the tax commission. * * * "

Section 1990 provides:

> "The tax commission may change or correct

any and all assessments of property for the purpose of taxation, in order to make the assessments conform to **the true and correct valuation,** not to exceed its actual cash value. * * * "

Section 1992 provides:

" * * * *

"The governing authority of the parish shall sit as a board of reviewers on the assessment **of all property not directly assessed by the tax commission.** * * * In any case where the board of reviewers may determine that the amount of actual cash valuation fixed by the tax commission is too high, it shall cause a record thereof to be made by the clerk of the governing authority of the parish * * * and the tax commission shall review the case. * * * The parish board of reviewers, of its own initiative or upon the complaint of taxpayers, may oppose the actual cash valuation fixed by the tax commission. * * * "

Section 1993 provides:

"As soon as the assessment lists have been approved by the parish governing authorities as boards of reviewers, the assessors shall prepare the assessment rolls in triplicate. * * *

"The act of depositing the rolls by the assessor in the office where the records of the parish are kept, shall be deemed prima facie evidence that the assessment has been made and completed in the manner provided by law. * * *

"From the day the roll is filed in the recorder's office, it shall act as a lien upon each specific piece of real estate thereon assessed. * * * "

Section 1998 provides:

"**The assessor shall bring suit, when necessary, to protect the interest of the state, and shall**

also have the right of appeal and such proceedings shall be without cost to him or the state. * * * "

The evidence shows that the procedure outlined (beginning with Section 1987) has been followed with respect to the valuation of this bridge, not only for the year 1952 but for every year prior thereto since this bridge was first assessed in 1936. The statutes very clearly show that the direct assessment made by the Louisiana Tax Commission was improper. However, if there is any doubt as to what the legislature intended, the contemporaneous construction made is persuasive. The Tax Commission and the Assessor, who together are the agents charged with the administration of these tax laws, have interpreted the law to mean just what the plaintiffs contend in this suit. *State ex rel. Guillot, Sheriff and Ex-Officio Tax Collector v. Central Bank & Trust Co.*, 143 La. 1053, 79 So. 857; *State ex rel Payne, Tax Collector v. Exchange Bank of Natchitoches*, 147 La. 25, 84 So. 481; *Dominion Land Co., Ltd. v. Stark, Tax Collector, et al*, 156 La. 124, 100 So. 244; *State v. Standard Oil Co. of Louisiana*, 188 La. 978, 178 So. 601; *State v. Standard Oil Co. of Louisiana*, 190 La. 338, 182 So. 531; *Jackson v. Coxe, State Superintendent of Public Education, et al*, 208 La. 715, 23 So. (2d) 312; *National Lead Co. v. U. S.*, 252 U.S. 140, 146, 40 S. Ct. 237, 64 L. Ed. 496; *Delta Life Ins. Co. v. Martin*, 59 So. (2d) 465; *Texas Co. v. Wilkinson, et al, Magnolia Petroleum Co. v. Same*, 21 F. Supp. 771, 780; *Douglas v. Commissioner of Internal Revenue*, 322 U.S. 275, 64 S. Ct. 988; *Mogis v. Lyman-Richey Sand & Gravel Corp.*, 189 F. (2d) 130, 342 U.S. 877, 72 S. Ct. 168.

Revised Statutes 47:1990 requires that the Tax Commission must act before the taxes levied have actually been paid.

In this case the Tax Commission did not make any change or correction in the assessment. It arbitrarily cancelled the existing assessment from the regular roll altogether and itself made a new one upon the public service roll, for which it had no authority whatsoever to do.

Revised Statutes 47:1998 does not say that the action of the Tax Commission is final. On the contrary, it includes the provision that the Assessor shall bring suit to protect the interest of the State of Louisiana, which we have heretofore observed in the prior laws.

In this case, the action is against the Louisiana Tax Commission for the protection of the interest of the State of Louisiana.

Article VII, Section 1, of the Louisiana Constitution of 1921 declares that the judicial power shall be vested in the Supreme Court, in Courts of Appeal, in District Courts, and in such other Courts as therein specified. The Constitution did not place the Tax Commission beyond the supervision of the Judiciary, the Legislature has no power to do so, and the Tax Commission does not contend that it has such powers.

For the reasons assigned, the judgment of the district court is reversed and set aside.

It is now ordered, adjudged and decreed that the 1952 assessment of $1,800,000.00 of the Bridge Structure property of Warren County, Mississippi, situated in Madison Parish, Louisiana, (directed by the Louisiana Tax Commission) be cancelled and set aside;

It is further ordered, adjudged and decreed that the

1952 assessment of $3,150,000.00 of the Bridge Structure property of Warren County, Mississippi, situated in Madison Parish, Louisiana, (as made up by the Madison Parish Assessor, approved and originally filed) be reinstated.

All costs to be paid by defendant, Warren County, Mississippi.

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No. 324

In the Supreme Court of the United States

OCTOBER TERM, 1955

WARREN COUNTY, MISSISSIPPI, PETITIONER

v.

C. E. HESTER, SHERIFF AND TAX COLLECTOR, MADISON PARISH, ET AL.
STATE OF LOUISIANA, INTERVENOR RESPONDENTS

BRIEF FILED ON BEHALF OF RESPONDENTS, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA.

SUMMARY OF FACTS

Under a revenue-bond transaction *(Plffs. Exs. E.F.G.)* consummated on April 30th, 1947, Warren County, Mississippi, acquired ownership of a combination highway-railroad toll bridge structure spanning the Mississippi River between Vicksburg, Warren County, Mississippi and Delta Point, Madison Parish, Louisiana *(Plffs. Ex. I)*. Its previous private owner was Vicksburg Bridge Company, a Delaware Corporation.

The bridge had been constructed in 1930 under an *Act of Congress of May 3rd, 1926 (Public Law No. 170, 69th Congress, H.R. 9758 - 44 Stat. L. 388)*. By length 83.2% of the bridge is situated in Madison Parish, Louisiana and 16.8% in Warren County, Mississippi *(Odom, Ex. 3)*.

By value in excess of 75% of the bridge structure is situated in the state of Louisiana and within the territorial limits of the Fifth Levee District and Madison Parish thereof. **The taxes here involved are only the** *ad valorem* **property taxes levied by that State and by those local political sub-divisions thereof** - all such taxes being predicated upon an identical assessment valuation determined in accordance with the applicable assessment laws of Louisiana.

For use of the Highway portion of the bridge vehicles were and still are charged a *toll rate prescribed solely by the bridge owners (Plffs. Exhibits M. N. & O.)* and contractual rentals for a gas pipe-line and telegraph cables and telephone lines upon the bridge *(Plffs. Exs. A, 7, 8 & O)*. The railroad section of the bridge is under an exclusive 999 year lease with the Yazoo and Miss. Valley Railroad Company *(Plffs. Exs. A. 5, 6 & N)*.

Upon its acquisition in 1947 Warren County, Mississippi sought to avoid the payment of any ad valorem property taxes for the tax-year 1948

to the state of Louisiana, to the Fifth Louisiana Levee District and to Madison Parish, Louisiana, upon the ground that its bridge property was exempt from taxation as "public property" under *Sec. 4 of Art. X of the Constitution of Louisiana.* The Supreme Court of Louisiana held to the contrary and certiorari was denied by the Supreme Court of the United States:

Warren County, Mississippi vs. Hester, 219 La. 763, 54 So. 2nd 12; 342 U. S. 877, 72 S. Ct. 167, 96 L. Ed. 659

The Louisiana state and local taxes for the tax-year 1949 were resolved accordingly in similar litigation pending in local state and Federal District Courts. For the tax-years 1950 and 1951, involving an identical increased assessment, suits were filed by Warren County, Mississippi only in the United States District Court for the Western District of Louisiana, Monroe Division against the assessing authorities and the local tax beneficiaries. Those suits attacked only the legality, propriety and constitutionality of the increased assessment valuation, which had been originally determined upon an identical basis ($3,150,000.00) by the Assessor of Madison Parish, Louisiana, and approved for each of those tax-years by the Police Jury of Madison Parish, Louisiana, sitting as a Board of Reviewers and also for each of those tax-years finally approved by the Louisiana Tax Commission, certified and cleared with

the State Auditor and Supervisor of Public Accounts and directed to be filed by the Parish Assessor with the Clerk of Court and with C. E. Hester, the Parish Sheriff and ex-officio Tax Collectors *(Hester Exhibits 4, 5; Plff. Exs. I-XI)*— all as provided for and contemplated by Louisiana law. *(La. R.S. 47:1903, 1931, 1951, 1952, 1953, 1956, 1957, 1958, 1979, 1980-1986, 1987, 1988, 1989, 1990, 1992, 1993, 1998, 2051, 2109, 2103, 2110).*

In 1952 the same procedure was followed. In approving the assessor's listings in June the Tax Commission reserved this bridge assessment for further consideration but in August it unqualifiedly approved and certified the final tax rolls containing the $3,150,000.00 assessment of this bridge property as "Miscellaneous" property upon the "General" tax roll. Again for 1952 this taxpayer filed a similar suit in the federal district court.

Thereafter, purporting to act under *La. R.S. 47:1980* et seq., the Louisiana Tax Commission, on October 20th, 1952, *(Hester Exhibits 3(a), (b), (c), (d), and 5(a) and (c))* reversed its several previous approvals for the tax years 1950-1952, and itself directed the Tax Collector to cancel said assessment upon the 1952 general tax roll as "Miscellaneous Property" *(Hester Exhibit 6)* and to enter upon the "Public Service" tax roll an assess-

ment by it initially made of this bridge property as "public utility property" at a greatly reduced valuation—$1,800,000.00. *(Hester Ex. 6(a), (b), 7).*

Whereupon, a declaratory judgment action was filed in the State Court at the Domicile of the Tax Commission, by the Assessor, Tax Collector, local Tax Beneficiaries (Police Jury, Levee Board and School Board) and by a number of individual property taxpayers against the Louisiana Tax Commission and this bridge property Taxpayer, attacking the October 1952 action of that Commission and the $1,800,000.00 direct public utility assessment as "arbitrary, erroneous, unreasonable, illegal, null and void;" and asserting the legality and correctness of the prior $3,150,000.00 assessment.

In this state court proceeding against the Louisiana Tax Commission and taxpayer Warren County, Mississippi, the state of Louisiana by its Attorney General, intervened seeking identical relief against both said defendants.

On April 25th, 1955, reversing and setting aside the contrary judgment of the District Court for the 19th Judicial District of Louisiana, the **Supreme Court of Louisiana held** that this Vicksburg bridge property was not of a public utility character which, under the applicable law of Louisiana, the Louisiana Tax Commission had the right

and power to initially and directly assess and, therefore, its October 20th, 1952, action so doing was unauthorized and improper and that the *$3,150,000.00 assessment was lawful.* Accordingly the **Louisiana Supreme Court "ordered, adjudged and decreed:"**

1. *"that the 1952 assessment of $1,800,000.00* of the bridge structure property of Warren County, Mississippi, situated in Madison Parish, Louisiana *(directed by the Louisiana Tax Commission) be cancelled and set aside;"*
2. *"that the 1952 assessment of $3,150,000.00* of the bridge structure property of Warren County, Mississippi, situated in Madison Parish, Louisiana *(as made up by the Madison Parish Assessor, approved and originally filed) be reinstated."*

After denial on May 23rd, 1955 of separate petitions for rehearing timely filed by the Louisiana Tax Commission and by Taxpayer Warren County, Mississippi, the latter, taxpayer only, on August 12th, 1955, filed this Petition for a Writ of Certiorari to have this Court review that decision and judgment of the Supreme Court of Louisiana.

No petition for certiorari was filed on behalf of the Louisiana Tax Commission. The State of Louisiana, Respondent-Intervenor, joins in submission of this brief in opposition to the taxpayers petition for certiorari.

II. JURISDICTION OF U. S. SUPREME COURT

As here applicable, *28 U.S.C.A. Sec. 1257 (3)* provides: "Final judgments or decrees by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:

> By Writ of Certiorari * * * where any * * * right is specially * * * claimed under the Constitution * * * or statutes of * * * the United States."

This Petition for Certiorari does involve a final decision of the Supreme Court of Louisiana. But **this record does not warrant or justify any right arising under the Constitution of the United States or under any federal statute.**

The only federal statutes cited are an *Act of Congress of May 3rd, 1926 (Public No. 170, 69th Congress, 44 Stats. 388)* and the *General Bridge Act of 1906, 33 U.S.C.A. Sec. 491 et seq.* The former merely grants to a private corporation the authority to contsruct and operate a railroad-highway toll bridge across the Mississippi river at Vicksburg, Mississippi, in the usual and customary general requirements and provisions, authorizing its condemnation under state laws by public authority at any time and under a special formula of compensation after twenty years from its completion. Nothing therein compels or requires this bridge to become publically owned or completely

toll free. Aside from general requirements as to approval and regulation by federal authority of location, construction and use of bridges over navigable streams—not here at issue—the only provision of the General Bridge Act here possibly relevant is the definition of "persons" as including "quasi-municipal corporations" *(sec. 497)*, which is here asserted in refutation of a ruling by the Louisiana Supreme Court *in a former (1951) decision but not in this decision* to the effect that a political sub-division of a state, as Petitioner "cannot be viewed as a person within the purview of" the due process and equal protection clauses of the Fourteenth Amendment. *(219 La. 781)*.

Cf: *Shelby vs. City of Pensacola, 112 Fla. 584, 151 So. 53*

Riley vs. Stack, 128 Cal. App. 480, 18 Pac. 2nd 110

Los Angeles County vs. Superior Court, 128 Cal. 522, 18 Pac. 2nd 112

Rosebud County vs. Fleim, 109 Mont. 537, 98 Pac. 2nd 330

This court denied certiorari in that case *(342 U. S. 877, 72 S. Ct. 167)* and there is no such ruling in this decision for which certiorari is now sought; hence no basis for certiorari in this case—*no adverse state court decision of a federal question* here, no such decision at all; *no lack of decision in conflict with applicable decisions of this Court* (Rule 19); and, in reality *no federal question of*

substance or of public importance is shown by this record.

The alleged Constitutional issues are equally devoid of substance or merit: there is no proof here that the state assessment of this bridge was in any way consequent upon its public ownership by petitioner; that it was in any way influenced by the contingent fee of a special attorney lawfully employed; or that there is any law state or federal which requires this bridge to be assessed upon the same basis as all other property of entirely different classification.

This Court is, therefore, without jurisdiction to grant Certiorari in this proceeding.

III. STATUTES INVOLVED

Petitioner for Certiorari in its statement *(p. 3 of Petition)* states that the only statutes here involved are the *General Bridge Act of 1906 (33 U.S. C.A. Sec. 491 et seq.)* and the 1926 Federal franchise authorizing a private corporation to construct this bridge over a navigable stream *(44 Stat. 388)*. The fact is as above shown, neither of those federal statutes has any material bearing here, where the only really relevant laws are the Constitution and assessment laws of Louisiana, upon which the Louisiana Supreme Court decision was solely based but which petitioner omits any refer-

ence to and would have this Court ignore entirely because these laws conclusively demonstrate:

1. That the Constitution of Louisiana contemplates and provides for the classification of property for the purposes of assessment and taxation, which has been the universal and long practice in that state.

Great Atlantic & Pacific Tea Co. v. Grosjean, 1937, 57 S. Ct. 772, 301 U. S. 412, 81 L. Ed. 1193, 112 A.L.R. 293, rehearing denied 58 S. Ct. 3, 302 U. S. 772, 82 L. Ed. 599.

Ohio Oil Co. v. Conway, 1930, 50 S. Ct. 310, 281 U. S. 146, 74 L. Ed. 775.

Lacoste v. Department of Conservation of State of Louisiana, 1924, 44 S. Ct. 186, 263 U. S. 545, 68 L. Ed. 437.

Union Sulphur Co. v. Reed, D. C. 1918, 249 F. 172.

State v. Arthur Duvic's Sons, 1936, 185 La. 647, 170 So. 23.

State v. Lathrop, 1855, 10 La. Ann. 398; City of New Orleans v. Kaufman, 1877, 29 La. Ann. 283, 29 Am. Rep. 328; State v. Ogden, 1855, 10 La. Ann. 402.

2. The statute law of Louisiana rejects as a sole basis for assessment valuation original cost and specifically requires that assessing authorities shall "consider every element of value." *R.S. 47:1702 (7); F. Strauss & Son vs. Coverdale, 205 La. 903, 18 So. 2nd 496:*

Counsel for defendant * * * that the actual

> cash value is the amount the merchandise would bring when sold on the regular market. To support this they cite *Baker-Lawhorn & Ford, Inc., v. Louisiana Tax Commission, 15 La. App. 189, 130 So. 642, 644,* * * * When that case was decided (1930) the existing and effective statutory definition of actual cash value was the "price that any piece of real estate or personal property or movable property would sell for, for cash in the ordinary course of business, free of all encumbrances otherwise than by forced sale." *Section 91, Act No. 170 of 1898,* as amended by *Act No. 130 of 1902.* But in 1934 the Legislature, by *Section 1 of Act No. 126* of such year (above quoted), changed that provision, declaring that in arriving at the actual cash valuation of property the assessing authorities should consider every element of value, and that the price at which it shall have been sold for cash in the ordinary course of business shall be evidentiary only and considered with other factors.

Here the Louisiana Tax Commission incorrectly refused to consider every element of value (earnings, reproduction cost, franchise value, etc.) Admittedly, giving them a fair consideration the assessment of $3,150,000.00 here in question, is proved to be just, reasonable and not discriminatory, which alleged discrimination is the only basis for the charge of denial of due process and equal protection here contended for. That there

is no interstate commerce burden here involved is conclusive under the Detroit Bridge decisions of this Court.

3. The other applicable Louisiana Assessment laws here involved are listed in this decision of the Louisiana Supreme Court.

IV. REASONS WHY CERTIORARI SHOULD BE DENIED

No sound or reasonable ground exists for the allowance of Certiorari in this action. *No real or actual federal constitutional issue exists and no other federal question is presented by this record. Therefore such issues were not determined below.* There here exists no special or important reasons for allowance of Certiorari, as contemplated by law or provided for by Rule 19 of this Court. The April 25th, 1955 declaratory judgment and decision of the Louisiana Supreme Court, now sought by Petitioner to be reviewed by this Court, made no mention of and did not decide any federal question at all because, in reality, under this record there exists no federal question of substance or, if any, none not readily determinable in accord with applicable decisions of this Court.

Petitioner, Taxpayer Warren County, Mississippi, objects to the amount of state and local ad valorem taxes levied against its toll bridge property, the greater portion of which is situated in Madison Parish, Louisiana. As shown, *the Louisi-*

ana Supreme Court first held in the former case, the Louisiana portion of this bridge property is subject to ad valorem taxation in Louisiana. This case involves only the amount of such taxes, as predicated upon an assessment valuation, which *the Louisiana Supreme Court, secondly in this case, ordered reinstated as a lawful assessment, as same was originally made by the Parish Assessor, approved by the Parish Board of Reviewers (Sparling Ex. 2) and originally on August 29th, 1955, was unqualifiedly approved, certified and cleared and directed filed by the Louisiana Tax Commission (Plff. Ex. 5).* In so ruling the Louisiana Supreme Court rejected a belated effort of that Tax Commission to itself make an initial direct assessment of this combination railroad-highway bridge as such a public utility property as the Louisiana law contemplates will be so assessed; that Court rejected, cancelled and set-aside the $1,800,000.00 assessment valuation so made by that Commission in October 1952, for the first time in the 20 year taxable life history of this bridge property; and, furthermore, ordered reinstated, as lawful, the $3,150,000.00 assessment previously made, approved, certified, cleared and filed—all according to state law.

In the petition for certiorari (P. 2) the petitioner has indulged itself in charging:

"(b) Calculated discrimination in taxing such toll bridge has been condoned and sane-

tioned by the highest Court of the State which imposed the tax, all in denial of the equal protection of the laws assured by said Fourteenth Amendment" and has so charged that it has been denied due process.

This unwarranted assault upon the State Supreme Court can only mean that this taxpayer, Petitioner, thinks it is a denial of due process for anyone to disagree with it; a denial of due process for that Court to reject its contentions about the authority of the Louisiana Tax Commission; a lack of due process to require the Tax Commission to observe the statutory law and its own practices for more than twenty (20) years; that it constitutes a discrimination and a deprivation of property without due process and a denial of equal protection to make this taxpayer pay $95,000 taxes upon an assessment of $3,150,000, out of $1,000,000 annual net earnings; because this is precisely what the Supreme Court of Louisiana here did.

The elaborate and extensive evidence in this record must necessarily have convinced the Supreme Court of Louisiana that the assessment valuation originally determined by the Madison Parish Assessor ($3,150,000.00) and subsequently unqualifiedly approved, certified, cleared and ordered filed by that Tax Commission itself, *was correct in fact*, for, assuredly, even after ruling that the Tax Commission's direct assessment ($1,800,-

000.00) was unauthorized, **that Court would not have ordered same reinstated had there been either** (a) *"excessive valuation,"* (b) calculated *"discrimination"* against taxpayer Warren County, (c) the *"singling out" of its property for "untrammelled tax increases,"* or (d) *an assessment increase for the primary or particular benefit of a special counsel,* the importance of whose employment contract is indicated by the approval of the Governor and the Attorney General *(Defts. Exs. 1, 2)* as authorized by law *(R.S. 42: 262, 263).*

In the instant case special attorney Hudson was employed in 1948 to resist this taxpayers "public property tax exemption" suit during the trial of which the disclosure of the enormous net earnings of this bridge was a material factor in the increase of assessment in 1950, not 1948. This taxpayer had in 1948 employed two separate law firms.

The employment of special counsel by public boards and officials, including tax authorities and beneficiaries has long been approved by Louisiana law as have contingent fees therefor.

Op. Atty. Gen. 1916-1918, p. 343, 499, 508, 594; Act 125 of 1912, Sec. 3; Act 341 of 1938; Act 182 of 1940; Op. Atty. Gen. 1924-26, p. 422; Ibid. 1932-34, p. 630; Ibid. 1942-44, p. 1214; First Sewerage Dist. vs. City Council, 215 La. 428, 40 So. 2nd 808; Saint vs. Allen, 172 La. 350, 134 So. 246.

An attempt by petitioner to predicate a federal constitutional issue upon a partially contingent and wholly moderate fee for Mr. Hudson, a former President of the Louisiana Bar, smacks of every doubtful propriety as well as undoubted want of merit, as the courts have uniformly regarded it in this litigation. In any event, *the engagement of skilled personnel to adequately advise and present the true values of this or other property to both the Tax Commission and to the Courts is by no means a denial of due process or of equal protection or a discrimination or deprivation of property, in fact or at law.* Both the state and Federal Courts of Louisiana have properly rejected that unsupported, far-fetched and gratuitous contention and its unwarranted inference of corruption on the part of a reputable attorney and the numerous public officials involved, which respondents resent as well as refute and denounce.

Instead of being discriminated against or it being here singled out for unfair treatment, the undisputed evidence in this record proves that, after having approved the assessor method of initiating the assessment of this same property, **thirty-four (34) times** during the tax-years 1936-1952, and after having, over protest and hearing, approved the $3,150,000.00 valuation **six (6) times** during the tax years 1950, 1951 and 1952, this Louisiana Tax Commission reversed all that and itself illegal-

ly made an assessment valuation of this same property, until then unchanged during 1950, 1951, 1952, which *approximates 27½% of its actual cost in 1930, less than 30% of its 1930 cost allowed by U. S. Army Engineers* for the Congressional condemnation formula purpose *(Pub. 170, 69th Cong., Sec. 4), slightly more than 25% of its 1947 revenue-bond liquidation basis and slightly more than 14% of its actual 1952 value!*

This taxpayer and the Commission's October 1952 valuation incorrectly ignored as elements of value any capitalized earnings, reproduction cost, franchise value, all considerations of prudent investment valuation or any other material factor of value save, original cost in 1930 (2/3) and the 1947 revenue bond basis (1/3). **Not even that method of assessment valuation is Petitioner's idea of the requirements of due process and equal protection for it attacked it and appealed from it.** Petitioner claims that its own original cost depreciated method (ignoring earnings, reproduction cost, franchise value, etc.) is *somehow guaranteed by the U. S. Constitution,* notwithstanding the statutory requirement of the law of Louisiana that "every element" of value must be considered in determining a fair assessment value. *(R. S. 47: 1702 (7) 1979).*

Truth here is, that, if there be any discrimination at all, factually or legally, it is in favor of this

taxpayer or against other taxpayers, generally, because, according to this record ordinary taxpayers are assessed at about 30%-40% of actual value—but of *current actual value, not cost a generation ago or a revenue bond transaction,* as this taxpayer contends that it should be assessed only upon the basis of cost a generation ago—1930. The only other bridge directly assessed by the Louisiana Tax Commission is and since 1907 has been taxed upon a basis of assesment approximating a $3,150-000.00 1952 assessment for this bridge; as also does the assessment valuations placed upon the Mississippi portions of this bridge by Warren County, Mississippi, itself, when it was then collecting taxes upon this same property—1936-1947 (Jacobs Ex 5; Pltf's. Exs. H. I).

That other bridge directly assessed by the Tax Commission was properly so assessed—and without objection—because it is an integral part of a railroad in fact and used only by three railroads and therefore, specifically covered by the statutes granting to the Louisiana Tax Commission limited direct assessing authority *(R.S. 47: 1980 of seq.;* Pltf's Ex. 4).

While the assessment of this bridge property has been materially increased since 1947, that fact warrants no inference of discrimination because: (a) During most of its private ownership it failed to earn enough for maintenance and

carrying charges while in 1952 its **net earnings exceeded $1,000,000.00 per year;** (b) Until acquired by Warren County, Mississippi in 1947, this bridge was **subject to condemnation at an arbitrary and much less than real value as a condition of its Congressional franchise.** *(Public Act No. 170, 69th Cong., Sec. 4);* (c) Reproduction cost have increased and continue to greatly increase. It is probably true that neither local authorities nor the Tax Commission did increase the inordinately low assessment of this bridge as soon or as rapidly as should have been, but that is no reason for freezing thereafter unwarranted low valuation assessments or discrimination not to.

Common reason shows that a toll bridge property producing annual net revenue in excess of $1,000,000.00 is not being confiscated when assessed at $3,150,000.00 and so required to pay from its more than a million a year net earnings, aggregate state and local taxes of about $95,000.00 per year in Louisiana, while entirely exempt from all Federal and all Mississippi taxes.

As to the interstate commerce contention, the point plead and urged below was that any assessment in excess of adjusted original cost depreciated would constitute a violation of the commerce clause of the federal constitution.

As shown by *Point 3, page 3 of this Petition* for Certiorari, apparently recognizing that the ruling

of this Court in the Detroit Bridge decisions *(Detroit Int. Br. Co. vs. Board, 294 U.S. 83, 55 S. Ct. 332, 89 L. Ed. 777)* to the interstate commerce contention presented below, that contention has seemingly been switched here by Petitioner, which now contends that, because this is an "interstate" toll bridge even though this bridge is the only one of its kind in Louisiana subject to taxation—all other such Louisiana bridges being publically owned, free of tolls and tax-exempt by the state constitution—*this bridge may not be classified for taxation*, as is provided for and contemplated by the Louisiana Constitution (Art. X, Sec. 1) but *must be assessed and taxed upon the same basis as "all other property in the taxing district"* (which is here the whole state). The admitted fact is this taxpayer, Warren County, Mississippi, is not required by any law, to make this bridge "toll free to the general travelling public" and has no intention of every making this bridge free of tolls, except partially so as to private passenger vehicles only and never so as to commercial carrier vehicles, railroad, pipelines, telephone and telegraph lines or any other class of users of the bridge. *(Plffs. Exs. A, (14) (15).*

No decision or authority is cited to support such remarkable attempted misapplication of an interstate commerce concept—none exist. *This bridge structure is not commerce at all, interstate*

or otherwise. The taxes here involved are all ad valorem property taxes upon the bridge structure alone, not upon the commerce which flows over it, in any sense. Whether or not, at its owners option, it ever becomes partially or even wholly toll-free presents no possible federal question or constitutional issue.

The alleged "Questions Presented" *(Petition for Certiorari, p. 2-3)* are three:

1. Can Louisiana taxing authorities "disregard the Fourteenth Amendment" in taxing this bridge because it is owned by Warren County, Mississippi, which acquired and is operating it under Congressional authority?

If such blanket reference to the Fourteenth Amendment suffice to raise a federal question, which respondents deny, *(4 Cyc. Fed. Pro. Sec. 1139, 1140, p. 433 et seq.; Simpkins, Fed. Prac., Sec. 458, p. 398, et seq.; Moore's Fed. Prac (2nd Ed.) Vol. 2, p. 396-405, all citing numerous decisions)* the burden upon interstate commerce, want of due process and the denial of equal protection only were plead below, were not very seriously argued and neither was considered or passed upon below—**not because "ignored" but because not shown to exist in reality or to be established by any evidence in this record.**

In its 1951 decision on the tax-exemption point *(Warren Co., Miss. vs Hester, 219 La. 763,*

54 So. 2nd 12, 72 S. Ct. 167, 342 U. S. 877, 96 L. Ed. 659) the Louisiana Supreme Court did consider, pass-upon and squarely reject those Federal questions presented by Petitioner; and **this Court then denied certiorari.** But that decision is not now at issue here where the Louisiana Supreme Court decision for which Petitioners now seek review makes no mention of such federal questions. That and this Court's 1951 disposition and rejection of those issues was sound and proper. No valid reason exists for their reconsideration now in this proceeding, which mainly involves a construction and application of Louisiana assessment laws and the validity of a specific assessment valuation in no way affected by the Federal Constitution.

2. Can a state consistently with the U. S. Constitution employ a special attorney, with the approval of the Governor and the Attorney General, authorized by its statutes to defend litigation by a taxpayer to reduce a tax-assessment upon a fee comprising a cash retainer and an amount contingent upon tax increase maintained?

The mere statement of this contention carries its complete answer. This record contains no proof whatever that such employment in 1948 had anything whatsoever to do with the increase of this assessment. Even if it had, no federal question is consequent thereupon.

3. Can an interstate toll bridge, which is the only property of its kind in a state which is subject to taxation, be separately classified for the purposes of taxation or does the Federal Constitution require that it be taxed upon the same basis as all other property in the state (or parish or levee district), when the state's Constitution contemplates such classification and requires uniformity only as to properties of the same class within the territorial limits of the taxing district? Or, will the fact that such classification could tend to postpone or preclude a reduction of tolls or their abolition as to private passenger vehicles only, render such classification unconstitutional?

Citation of the many available "classification" decisions appears to Respondents as unnecessary. **The Constitution of Louisiana contemplates classification of property for assessment and taxation.** *(Art X, Sec. 1).* It requires "uniformity" only "upon the same class of subjects throughout the territorial limits of the authority levying the tax" —here, not merely Madison Parish or the Fifth Levee District, but the State of Louisiana. Petitioner's obviously unsound contention is that due process and equal protection requires that this highly profitable toll-bridge must be assessed in the same manner as all other property in Madison Parish alone!

The authorities cited by Petitioner to this point are utterly inapplicable and completely inept.

The 1885 Gloucester Ferry decision *(114 U. S. 196)* merely rejected, as a burden upon interstate commerce, a Pennsylvania capital stock tax, measured by dividends declared, upon the capital stock of a New Jersey steamboat corporation operating a ferry across the Delaware river between Camden, N. J., and Philadephia, Pennsylvania, in which state the ferry company owned no property whatever, had no domicile and did no business. That decision, here factually inapplicable, affords no authority against the constitutional validity of a state tax upon the value of property within that state, even if owned by a non-resident or used in or as a facility for interstate commerce —supporting authorities are voluminous.

The 1894 Covington Bridge decision *(154 U. S. 204)* involved only the power of a state to regulate tolls upon an interstate bridge without consent of Congress or concurrence of the other state. The Detroit Bridge litigation *(287 U. S. 295, 53 S. Ct. 137, 77 L. Ed. 314; 294 U. S. 83, 55 S. Ct. 332, 89 L. Ed. 777)*, which Petitioners studiously refrain from citing or discussing, very emphatically distinguishes the interstate commerce concepts of all such early ferry and bridge cases—those cited by Petitioner, specifically.

There are, in fact, no "toll-free requirements" of any federal or state law applicable to this bridge and no law or decision holding that such bridge property cannot be lawfully classified for all tax purposes or that it must be assessed or taxed upon the same basis as all other property within the taxing district. The settled law is uniformly and emphatically to the contrary. *(84 C. J. S., Sec. 31, 180; 61 C. J. Sec. 147, p. 186)*.

For all of the foregoing reasons it is clear that Certiorari is not warranted here; this petition therefore should be denied.

Respectfully submitted,

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CERTIFICATE

I, Victor A. Sachse, certify that I am a member of the bar of the Supreme Court of the United States and that I am one of the counsel in the case of C. E. Hester, et al (State of Louisiana, Intervenor) vs. Louisiana Tax Commission, et al, as to which Warren County, Mississippi has filed a petition to this Court asking that a writ of certiorari issue to the Supreme Court of Louisiana, which petition is numbered and titled thus: "In the Supreme Court of the United States, October Term, 1955, No. 324, Warren County, Mississippi Petitioner versus C. L. Hester, et al, (State of Louisiana, Intervenor), Respondents"; that I have served copies of the foregoing brief in opposition to the petition for writ of certiorari upon counsel for Warren County, Mississippi, by delivering in person copies thereof to the office of L. W. Brooks and C. W. Phillips at 1106 Louisiana National Bank Building, Baton Rouge, Louisiana, and by mailing with postage prepaid additional copies thereof to Landman Teller 1205 Monroe Street, Vicksburg, Mississippi and H. C. Sevier, Sr., Tallulah, Louisiana this day; and I make this certificate to comply with Rules 40 and 33 of the Supreme Court of the United States.

Baton Rouge, Louisiana, September 24th, 1955.

Victor A. Sachse